A TREATISE OF THE PRINCIPALL GROUNDS AND MAXIMES OF THE LAWES OF THIS Kingdome.

VERY USEFULL AND commodious for all Studients, and such others as desire the Knowledge, and Understanding of the LAWES.

Lex plus laudatur quando ratione probatur.

Written by that Most Excellent, and Learned Expositor of the LAW, *W. N.* of *Lincolns-Inn*, ESQUIRE.

LONDON:
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The matters contained, and handled in this ensuing Treatise are chiefly as followeth.

VIZ.

1 *A Summarie Consideration of the whole* LAW, *divided into the Lawes*

Of { REASON. CUSTOME, and STATUTES.

2 *What things these Lawes doe chiefly concerne*; *As mens Possessions of Chattells, and of Lands, wherein some have Fee-simple,*

ſome Fee-tayle, ſome Eſtate for life, ſome for yeers, ſome at Will, ſome have Remainders, ſome have Reverſions; And the Remedies thoſe men ſhall have againſt them that doe wrong them in thoſe eſtates.

Of whom Lands are holden, and by what ſervice, and what advantage the Lord, and Guardian ſhall have by their Tenure; As Ward, Reliefe, and Marriage.

Of Rent, Common of Paſture, Way and Liberties in Lands, and the remedies to enjoy the ſame.

Of Chattell reall and perſonall, and ſome other things thereunto belonging.

How theſe Eſtates in Lands and Chattells may be lawfully conveyed and aſſured from one man to another; by what Inſtrument, Deed, or Writing; As by Feoffment with livery of Seizin, Grant with Attorn-

tornment, Bargaine, and Sale, inrolled Leaſe, Aſſignment, Releaſe, Confirmation, Warranty, Covenant, either abſolute, or upon condition.

Alſo of Bargaining, ſelling, lending, reſtoring, promiſing, &c. of Chattells perſonall, and how far a man ſhall be charged with the Act or miſdemeanor of another.

How theſe things may be left to our Poſterity after our death, by our Will, our goods to our Executors, and our Lands to our heires, or otherwiſe at our pleaſure.

Laſtly, for that divers Controverſies doe often ariſe about the ſame, I have ſet downe how the ſame may quietly be ended by friends, and of VVitneſſe, and of other things belonging to the ſame:

And were gathered, ſome at the Bar, and ſome out of divers Learned VVri-

Writers, and Expoſitors of the Law.

Theſe Grounds, and Maximes of the Law, being Originally written in French, are therein very Elegant, and ſententious: But now by their Tranſlation in our Vulgar tongue, loſe ſome of their grace and beautie, a thing incident unto all Tranſlations; which if it cannot be avoided, it is therefore to be the rather tollerated, becauſe they are very profitable for thoſe that doe not underſtand the French tongue.

CHAP.

CHAP. I.

The Lawes of England are threefold; Common Lawes, Customes, and Statutes.

THE COMMON-LAW.

THE Common Law is grounded on the Rules of reason, and therefore we use to say in Argument, That reason Will that such a thing be done, or that reason will not that such a thing be done; The rules of reason are of two sorts, some taken from Learning, as well Divine as Humane, and some proper to it selfe onely.

OF THEOLOGIE.

1.

Summa ratio est, quæ pro Religione facit.

A Tenure to finde a Preacher, if the Lord purchase parcell of the Land, yet the whole service remaineth, because it is

for the advancement of RELIGION.

2.

Dies dominicus non eſt Juridicus.

Sale on a Sunday ſhall not be ſaid Sale in a Market, to alter the property of the Goods.

OF GRAMMAR.

OF Grammar, the rules are infinite in the Etymologie of a Word, and in the conſtruction thereof, what is nature, is ſingle.

3.

Ad proximum antecedens, fiat relatio niſi impediatur Sententia.

As an inditement againſt I. S. ſervant to I.D. in the Countie of *Middleſex* Butcher, &c. is not good, for ſervant is no Addition, and Butcher ſhall be referred to I. D. which is the next Antecedent.

OF LOGICK.

4.

Ceſſante cauſa, ceſſant effectus.

THE Executor, nor the husband, after the death of a woman Guardian in ſoccage, ſhall not have the Wardſhip, becauſe

(*viz.*)

(*viz.*) the naturall affection is removed which was the cauſe thereof.

Some things ſhall be conſtrued according to the originall cauſe thereof.

5.

The Executor may releaſe before the probate of the Will, becauſe his title and intereſt is by the Will, and not by the Probate.

To make a man ſweare to bring me money upon paine of killing, and he bringeth it accordingly, it is felony.

Outlawry in Treſpaſſe is no forfeiture of Land, as Outlawry in felony is, for although the non-appearance is the cauſe of the Outlawry in both, yet the force of the Outlawry ſhall be eſteemed according to the heynouſneſſe of the offence, which is the principall cauſe of the Proceſſe.

6.

According to the beginning thereof:
As if a

Servant, which is out of his Maſters ſervice, kill his Maſter, through the malice which he bare him when he was his ſervant, this is petty Treaſon.

7.

According to the end thereof; As if a

Man warned to anſwere to a matter in a Writ, there he ſhall not anſwere to any other matter then is conteined in the Writ; for that was the end of his comming.

8.

Derivativa poteſtas non poteſt eſſe majus primativa.

A Servant ſhall be ſtopped to ſay the Franck-Tenement is belonging to his Maſter, by a recovery againſt his Maſter, although the ſervant be a ſtranger to the Recovery, for hee ſhall not be in better caſe then he is in, whoſe Right he claimeth, or juſtifieth.

9.

Quod ab initio non valet, in tractu temporis non convaleſcit.

If an Infante, or a married woman, doe make a Will, and publiſh the ſame, and afterwards dyeth, being of full age, or ſole, notwithſtanding this Will is voide.

10. *Unum*

10.

Vnumquodque dissolvitur eo modo quo Colligatur.

An obligation or other matter in writing, may not be discharged by an agreement by word, but by writing.

11.

Hee that claimeth a thing on high, shall neither have gaine, nor losse thereby.

As if one Joynt-Tenant make a Lease of his Joyntee, reserving rent, and dye; the heire which surviveth shall have the reversion of his Joyntee, but not the Rent, because he commeth in by the first Feofor, and not under his companion.

Also where the husband being leased for yeeres in right, reserving a Rent, the woman shall have the residue of the terme, but not the rent.

12.

Debile fundamentum, fallit opus.

When the estate whereunto the Warran-

tie is annexed is defeated, the Warranty is alſo defeated.

13.

Incidents may not be ſevered.

As if a man grant Wood to be burnt in ſuch a houſe, wood may not be granted away, but he which hath the houſe, ſhall have the wood alſo.

14.

Actio perſonalis moritur cum perſona.

As if batterie be done to a man, if he that did the battery, or the other die, the Action is gone.

If the Leaſor covenant to pay quit rents, during the terme, his Executor ſhall not pay it, for it is a perſonall covenant.

15.

Things of higher nature, doe determine things of lower nature.

As matters of writing doe determine an agreement by words.

If an offence, which is murder at the Common law, be made high Treaſon, no appeale ly-

lyeth for it, for that the Murder is drowned, and punishable as Treason, whereof no appeale lyeth.

16.

Majus continet minus.

Whereby the Custome of a Manor, a man may demise for life, hee may demise to his wife, *durante viduitate.*

17.

Majus dignum trahit se minus dignum.

As the Writings, the Chest or Box they are in.

Of Philosophy.

18.

Natura vis maximæ.

NAturall affection or brotherly love, are good causes or considerations to raise an use.

And one brother may maintaine for another.

a suite

19. The

19.

The law favoureth ſome perſons:

Viz.

Men out of the Realme, or in Priſon, Women married, Infants, Ideots, Mad-men, Men without intelligence, Strangers, that are neither parties, nor privie, and things done in anothers right.

A diſcent ſhall not take away the entry of a man out of the Realme, or in priſon, or of a married woman, or of an infant.

And a leaſe made to the husband and wife, after the death of the husband, the wife ſhall not be charged for Waſte, during the marriage.

An Ideot ſhall not be compelled to plead by his Guardian or next friend, but ſhall be in the Court, and he that pleadeth the beſt plea for himſelfe, ſhall be admitted.

If a dumb man bring an Action, hee ſhall pleade by his next friend.

If a Leſſee for yeeres grant a Rent charge, and ſurrendreth the rent ſhall be paid during the terme, to the Stranger.

A man Outlawed or Excommunicated, may bring an Action as an Executor.

20. *And*

20.

And a mans perſon, before his poſſeſſions.

Mentioning of corporall paine ſhall avoide a Deede, but not of his Goods.

21.

And matter of poſſeſſion more then matter of right, when the right is equall.

As if a man purchaſe ſeverall lands at one time, held of ſeverall Lords by Knights ſervice, and dyeth, the Lord which firſt ſeizeth the Ward, ſhall have it, otherwiſe his elder Lord.

22.

Matter of profit or intereſt ſhall be taken largely: and it may be aſſigned, and it may not be countermanded, but matter of pleaſure, truſt or authority ſhalbe taken Strictly, and may be countermanded.

As Licence to him in my Parke, or in my Garden to walke, extendeth onely to himſelfe,

ſelfe, and not to his ſervant, nor any other in his companie, for it is matter of pleaſure only; otherwiſe it is of a Licence to hunt, kill, and carry away the Deere, which is matter of profit.

A Church-way is matter of eaſe.

Of Politicall.

23.

NOthing ſhall be void, which by poſſibilitie may be good; If Land be given to a man, and to a Woman, married to another man, and the heires of their two bodies, this is a preſent eſtate Tayle, becauſe of the poſſibilitie.

24.

Ex nudo pacto non Oritur actio.

No man is bound to his promiſe, nor any ſuit can be raiſed without good conſideration.

A conſideration muſt be ſome cauſe or occaſion, which muſt amount to a Recompence in Deed, or in Law, as money, or naturall affection, not long acquaintance, nor great familiarity.

25. *The*

25.

The Law favoureth a thing that is of neceſſitie.

As to pay ſeverall expences, ſhall not be ſaid to Adminiſter; to diſtraine in the night, dammage feaſant, to kill another to ſave his owne life.

A ſervant to beate another to ſave his Maſter, if he cannot otherwiſe chooſe.

To drive another mans cattell amongſt mine owne, untill I come to a place to ſhift them, is not Treſpaſſe.

26.

And for the goods of the Commonwealth.

As killing of Foxes, and the pulling down of an houſe, of neceſſity to ſtay a fire.

27.

Communis error facit jus.

As an Acquittance made by a Major alone, where there be a hundred Preſidents, is good.

28.

And things that are in the Custody of the law.

Goods taken by Distresse, shall not be taken in Execution for the debt of the owner thereof.

29.

The Husband and the Wife are one person.

They cannot sue one another, nor make any grant one to another: And if a woman marry with her Obligor, the debt is extinct, and she shall never have any action, if another were bound with him; for by the marriage the Action is suspended, and an Action personall suspended against one, is a discharge to all.

30.

An Obligation with a cõdition to enfeoffe a woman before such a day, and before the day, the Obligor taketh her to wife, the obligation is forfeited, because he cannot infeoffe her, but he may make a lease for yeeres, with a remainder to his wife.

When a joynt Purchase is, during the marriage, every one shall have the whole.

When

When a joynt Purchaſe, during the marriage, is made, and the husband ſell; the wife ſhall have a *Cui in vitâ*, for the whole againſt both, and on a feoffment made to one man and his wife, and to a third perſon, the third perſon ſhall have one moiety.

31.

All that a Woman hath, appertaineth to her husband.

Perſonall things, & things abſolutely reall, as Lands, rents, and ſo forth, or Chattells reall, and things in Action, are onely in her right; notwithſtanding reall things, and things in Action, he may diſpoſe of at his pleaſure, but not Will or charge them; and he ſhall have her reall Chattells, if he ſurvive. Of things in Action, the woman may diſpoſe by her laſt Will, and ſhe may make her husband her Executor, and he ſhall recover them to the uſe of the laſt will of his wife.

If a Leſſee for yeeres grant his terme to a man, or woman, and to another, they are joynt-Tenants; But if goods be given to her and to another, her husband and the other, are Tenants in common.

The Husband may releaſe an Obligation, or Treſpaſſe for goods taken when his wife was ſole, and it ſhall be good againſt the woman if he die; but if he die without making

any such Releaſe, the woman ſhall have the Action, and not the Executor of her husband.

The woman ſurviving, ſhall have all things in Action, or her Executors, if ſhe die.

The Husband ſhall be charged with the debts of his wife but during her life.

32.

The Will of the wife, is ſubject to the Will of her husband.

Note a Feoffment made to the wife, ſhe ſhall have nothing, if her husband doe not thereunto agree.

MORALL RULES.

33.

THe Law favoureth works of Charitie, right, and truth, and abhorreth fraud, coven, and incertainties, which obſcure the truth; contrarieties, delayes, unneceſſary circumſtances, and ſuch like.

34.

Dolus & fraus una in parte ſanari debet.

No man ſhall take benefit of his owne wronge,

wronge; if a man be bound to appeare at a day, and before the day the Obligee [illegible] him in prison, the bond is void.

A Grantee, of all his woods in B. Acre which may be reasonably spared, is a voide grant, if it be not reserved to a third person, to appoint what may be spared.

A Feoffment made in Fee of two Acres to two men, *Habend.* one acre to one, and the other acre to the other; this *Habend.* is voide.

35.

Lex neminem cogit ad impossibilia, &c.

The Law compelleth no man to shew that which by intendment he doth not know, as if a servant be bound to serve his Master in all his commandments lawfull; it is a good Plea, to say, he served him lawfully.

A Covenant to make a new Lease upon the Surrender of the old Lease, and after the Covenants, doth make a Lease by Fine, for more yeeres to estrange, the Covenant is broken, although the Lessee did not surrender, the which by the words ought to be the first Act, for that the other had disabled to take or to make.

Law Constructions.

THe Law expoundeth things with equitie and moderation, to moderate the ſtrictneſſe; it is no Treſpaſſe to beate his Apprentice with a reaſonable correction, or to goe with a woman to a Juſtice of Peace, to have the peace of her husband, againſt the will of her husband, which equitie doth reſtraine the generality, if there be any miſchiefe or inconvenience in it; As if a man make a feoffment of his lands in, and with Common, in all his Lands in *c.* the Common ſhall be intended within his Lands in *C.* and not in his other Lands he ſhall have elſe-where.

36.

Every Acte ſhall be taken moſt ſtrictly againſt him that made it.

As if two Tenants in Common, grant a Rent of 10. ſhillings, this is ſeverall, and the Grantees ſhall have 20. ſhillings: but if they make a Leaſe, and reſerve 10. ſhillings, they ſhall have onely 10. ſhillings between them.

So an Obligation to pay 10. ſhillings at the feaſt of our Lord God; It is no Plea to ſay that he did pay it; but he muſt ſhow at what

what time, or elſe it will be taken, hee paid it after the Feaſt.

37.

Hee that cannot have the effect of a thing, ſhall have the thing it ſelfe.

Ut res magis valeat quam pereat.

As if a Termor grant his Terme, *Habendum immediatè poſt mortem ſuam*, the Grantee ſhall have it preſently.

38.

When many joyne in one Act, the Law ſaith, it is the Act of him that could beſt doe it, and that things ſhould be done by thoſe of beſt skill.

As the Diſeizee, and the heire of the Diſſeizor, who is in by diſcent, joyne in a Feoffment; This ſhall be the Feoffment of the heire onely, and the confirmation of the Diſſeizee.

And the Merchant ſhall way the Wares, and not the Collectors.

39.

When two titles concur, the elder ſhall be preferred.

40.

By an acquittance for the laſt payment, all other Arrerages are diſcharged.

41.

One thing ſhall enure for another.

If the Leaſor enfeoffe the Leſſee for life, it ſhall be taken for a confirmation.

42.

In one thing, all things following ſhall be concluded, in granting, demanding, or prohibiting.

If one except a Cloſe, or a Wood, the Law will give him a way to it.

43.

A man cannot quallifie his owne Act.

As to releaſe an Obligation untill ſuch a time.

44. *The*

44.

The construction of the Law may be altered by the speciall agreement of the parties.

If a house be blowne downe by the winde, the Lessee is excused in waste; but if he have covenanted to repaire it, there an Action of Covenant doth lie by the agreements of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment, shall be taken to the intent of the parties; and common intendment is not such an intendment as doth stand indifferent, but such an intent as hath the most vehement presumption. All incertaintie may be knowne by circumstances, every deed being done to some purpose, reason would that it should be construed to some purpose, and variance shall be taken most beneficiall for him to whom it is made, and at his election.

46.

An intendment of the parties shall be ordered according to the Law.

If a man make a Leaſe to a man, and to his heires, for ten yeeres, intending his heires ſhall have it, if he die, notwithſtanding the intent, the Executors ſhall have it.

47.

Qui per alium facit, per ſe ipſum facere videtur.

A promiſe made to the Wife in conſideration of a thing to be performed by her huſband, if he agree, and performe the Conſideration; in an Action of the caſe, he ſhall declare the aſſumption was made to him.

And if my ſervant ſell my goods to another, in debt I ſhall ſuppoſe, he bought them of me.

CUSTOMES.

Conſuetudo eſt altera lex.

CUſtomes are of two ſorts; Generall Cuſtomes in uſe throughout the whole Realme, called Maximes, and particular Cuſtomes uſed in ſome certaine County, Citie, Towne, or Lordſhip, whereof ſome have been ſpecified before, and ſome follow here, and where occaſion is offered.

GENE-

GENERALL CUSTOMES.

THE Kings Excellencie is ſo high in the Law, that no freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxime is a ſufficient authoritie to himſelf, and which is a Maxime, and which is not, ſhall alwayes be determined by the Judges, becauſe they are knowne to none but to the learned.

A Maxime ſhall be taken ſtrict.

A particular Cuſtome, except the ſame be a Record in ſome Court, ſhall be pleaded, and tryed by 12. men.

CHAP. II.

Statutes.

THe laſt ground of the Lawes of *England* ſtandeth in divers Statutes made by our Soveraigne Lord the King, and his Progenitors, and by the Lords Spirituall, and Temporall, and the Commons in divers Parliaments, in ſuch caſes, where the former Lawes ſeemed not ſufficient to puniſh evill men, and to reward the good.

Of Generall Statutes, the Judges will take notice if they be not pleaded, but not of ſpeciall, or particular.

All Acts of Parliaments, as well private as generall, ſhall be taken by reaſonable conſtruction to be collected out of the words of the Act only, according to the true intention and meaning of the maker.

Foure leſſons to be obſerved, where contrary Lawes come in queſtion.

1. *The inferiour law muſt give place to the ſuperior.*
2. *The law Generall muſt yeeld to the law ſpeciall.*
3. *Mans lawes to Gods Lawes.*
4. *An old law to a new law.*

And oftentimes all theſe Lawes muſt be joyned together to helpe a man to his right, as if a man be diſſeized, and the diſſeizor made a Feoffment to defraude the Plaintiffe in this caſe, it appeares that the ſaid unlawfull entrie is prohibited by the law of Reaſon.

But the Plaintiffe ſhall recover double dammage, and that is by the Statute of 8. *Hen.* 6. And that the dammage ſhall be ſeſſed by 12. men, that is, by the cuſtome of the Realme, and ſo in ſome caſe, theſe three lawes doe maintaine the Plaintiffes right.

And theſe lawes concerne either mens poſſeſſions, or the puniſhment of offences.

And ſo much ſhall be ſufficient to be ſaid touching Common law, Cuſtomes, and Statutes.

CON-

Concerning Possessions.

THe difference between Possession and Seizin is;

Lease for yeeres is possessed, and yet the Lessor is still seized; and therefore the termes of the law are, that of Chattells a man is possessed; whereas in Feoffments, gifts In tayle, and Leases for life, he is called seized.

CHAP. III.

Of possession of Frank-Tenement.

TEnant in Fee simple, is hee which hath Lands, or Tenements to hold to him, and his heires for ever. It is the best Inheritance a man may have; He may sell or grant, or make his Will of those Lands.

And if a man die, they doe discend to his heire of the whole blood.

CHAP.

CHAP. IV.

FEE-TAYLE.

Fee-Tayle is, of what body hee ſhall come that ſhall inherit.

Tenant in tayle, is ſaid to be in two manners;

Tenant in Tayle Generall, and Tenant in Tayle Speciall.

GEnerall Tayle is, where Lands or Tenements be given to a man, and his wife, and to the Heires of their two bodies, or to his Heires males, or to her Heires Females.

Tennant in Tayle, is not puniſhable for waſte.

Tenant in Tayle cannot Will his Lands, nor bargaine, ſell or grant, but for terme of his life, without a Fine, or Recovery.

If a man will purchaſe lands in Fee, it behoveth him to have theſe words, Heires, in his purchaſe.

If a man would grant Lands in Tayle, it behoveth him to appoint what body they ſhall come of.

Yet a deviſe of lands to a man and his heires males, is a good Intayle, and of lands to a man for ever, a good Fee-Simple.

How Lands ſhall diſcend.

Inheritance is an eſtate which doth diſcend, it may not lineally aſcend from the ſonne which purchaſeth in Fee, and dyeth, to his Father; But diſcendeth to his uncle or brother, and to his heires, which is the next of the whol blood, for the half blood ſhall not inherit: But the moſt worthy of blood, as of the blood of the father before the mother, of the elder brother before the other, and borne within eſpouſall.

A diſcent ſhall be intended to the heire of him

him which was laſt actually ſeized; That the ſiſter of the whole blood, where the elder brother did enter after the death of his Father, and not his brother of the halfe blood, nor any other collatterall Coſen ſhall inherit; yet notwithſtanding ſuch a one is heire to a common Aunceſter, in which Rule, every word is to be obſerved, and ſo in every Maxime, if the Land, Rent, Advowſon, or ſuch like doe diſcend to the elder ſonne, and he die before any entry, or receipt of the rent, or preſentment to the Church, the younger ſonne ſhall have and inherite; and the reaſon is, becauſe that all inheritances in poſſeſſion, he which claimeth title thereunto as heire, ought to make himſelf heire to him that was laſt actually ſeized.

Here the poſſeſſion of the Leſſee for yeers, or of the Guardian, ſhall inveſt the actual poſſeſſion, and Franck-Tenement in the elder brother.

But he dying ſeized of a Reverſion, or a Remainder, or an eſtate for life, or intayle; There he which claimeth the Reverſion, or Remainder as heire, ought to make himſelfe heire to him that had the Gift, or made the purchaſe.

Feodo excludeth an eſtate tayle, where the ſecond ſonne ſhall inherite before the daughter.

And if the Lands be once ſetled in the blood of the father, the heire of the mother ſhall never have them, becauſe they are not of the blood of him that was laſt ſeized.

And to the heire of the blood of the firſt Purchaſer;

As if the Father purchaſe Lands, and it diſcendeth to the ſonne, who entreth, and dieth without heires of the fathers part, then the Lands ſhall diſcend to the heires of the mother or father of the father, and not to the heires of the mother of the ſonne, although they are more neere of blood to him that was laſt ſeized, yet they are not of the blood of the firſt purchaſer.

If the heires be females in equall diſtance, as daughters, ſiſters, aunts, and ſo forth, they ſhall inherit together, and are but one heire, and are called Parceners.

Gavill-kinde.

Doth diſcend to all the ſonnes, and if no ſonnes, to all the daughters: And may be given by Will by the Cuſtome.

CHAP.

CHAP. V.

PARCENERS.

Parceners are of two ſorts:

Viz.

Women, and their heires by the Common law.

Men, by the Cuſtome.

THey may have a Writ of Partition, and the Sheriffe may goe to the Lands, and by the oath of 12. men, make Partition between them, and the eldeſt ſhall have the Capitall Meſſuage by the Common Law, and the youngeſt by the Cuſtome; Where the parties will not ſhew to the Jury the certaintie, there they ſhall be diſcharged in conſcience, if they make Partition of

ſo much as is preſumed and knowne by preſumptions and likelyhoods.

Parceners may by agreement make partition by Deed, or by Word, and the eldeſt firſt chooſe, unleſſe their agreement be to the contrary.

Every part at the time of the partition muſt be of an even yeerly value, without incumbrance.

Rent may be reſerved for equality of Partition (and may be diſtrained for) without a Deed.

Parceners by divers diſcents, before partition, being diſſeized, ſhall have one aſſiize.

A Parcener before partition, may charge, or demiſe her part.

The entrie or Act of one Copartner, or joynt-Tenant ſhall be the Act of both, when it is for their good.

If a Parcener after Partition be entred, ſhe may enter upon her Siſters part, and hold it with her in Parcenary, and have a new Partition, if ſhe hold none of her part before ſhe was outed, *viz.* in Exchange.

CHAP.

CHAP. VI.

JOYNT-TENANTS.

JOynt-Tenants be ſuch as have joynt eſtates in goods, or lands, where hee that ſurviveth ſhall have all without incumbrance, if the Tenements abide in the ſame plight as they were granted.

Joynt-Tenants may have ſeverall eſtates;

A Joynt-Tennant cannot grant a Rent-charge, but for terme of his owne life.

A Joynt-Tenant may make a Leaſe for life, or for yeers, of his part, or Releaſe, and the Leſſee for yeers may enter, although the Leſſor die before the Leaſe begin, and his heire ſhall have the Rent, but Survivor the Reverſion.

A Joynt-Tenant may have a Writ of Partition by the Statute of the 31. of *H.* 8. *cap.* 32.

32. A Partition made by Joynt-Tenants, or Tenants in Common of Estates of Inheritance, must be by Indenture, by Word 'tis voide.

CHAP. VII.

TENANTS in COMMON.

Tenants in Common, are those that hold Lands and Tenements by severall titles.

They may joyne in action personall, but they must have severall actions Reall.

They may have a Writ of Partition by the Stat. of 31.H.8. cap.32.

IF one Parcener, Joynt-Tenant, or Tenant in Common take, all the other have no Remedie, but by *Ejectione firme*, or such like, or Waste.

Gavill

Tenant by the curteſie of *Kent*, whether he have Iſſue or no, untill he marry, and ſo forth, he may not commit Waſte.

CHAP. VIII.

TENANT in DOWER.

A Woman ſhall be indowed of all ſorts of inheritance of her huſband, where the Iſſue that ſhe had by him may inherit, as heire to his father, by meetes, and bounds of a third part.

She ſhall have houſe-roome, and meat, and drinke in Common, for forty dayes: But ſhe may not kill a Bullock within thoſe 40. dayes after the death of her husband, in which time her Dower ought to be aſſigned her.

The Aſſignement by him that had the Franck-Tenement is good, but by him that is Guardian in Soccage, or Tenant by *Elegit*,

verte Elegit, or Statutes, or Leſſee for yeeres, is not.

She is to demand her Dower on the Land.

She ſhall recover dammages when her huſband dyed ſeized, from the death of her huſband; if the heire be not ready at the firſt day to aſſigne her Dower.

She ſhall have all her Chattells reall againe, except her husband ſell them, he may not charge them, or give them by his Will, and likewiſe her bonds, if the money were due in the life of her husband, and all convenient apparrell; but if ſhe have more then is fit for her degree, it will be aſſets.

A woman ſhall be barred of her Dower ſo long as ſhe deteineth the body of the heire, being Ward, or the Writings of the ſonnes Land;

A woman ſhall not be endowed of any lands that her husband joyntly holdeth with another, at the time of his death.

Dower of Gavill-kinde lands.

If the woman ſhall be indowed of one half ſo long as ſhe is unmarried, and chaſte, and it may be held with the heire in Common.

It is of Lands and Tenements, and not of a Faire or ſuch like; where the Heire loſeth not

not his inheritance, there ſhee loſeth not her Dower.

Joynture.

IF a Woman have a Joynture before marriage, ſhee may claime no Dower, 27. *Hen.* 8.

If it be made during marriage, ſhe may enter into her Joynture preſently.

If ſhe enter, or accept of it, ſhe ſhall not be endowed.

If ſhe ſhall be expulſed of any part of her Joynture, ſhe ſhall be endowed of the reſidue of her husbands Lands.

CHAP. IX.

Tenant for terme of life.

TEnant for terme of life, is hee that hath Lands or Tenements for terme of his life, or another mans life, and none of leſſer eſtate may have a Freehold.

If a Tenant for life sowe the Lands, and die before the corne be reaped; his Executor shall have it, but not the Grasse, nor other fruite.

If a Tenant for life be impannelled upon an Inquest, and forfeit Issues and die, they shall be levied upon him in the Reversion, and so likewise, if the husband on the Lands of the wife.

CHAP. X.

Tenant for Terme of yeers.

Tenant for terme of yeeres, is where a man letteth lands or tenements to another for certaine yeers.

HEE may enter when he will, the death of the Lessor is no ler, and may grant away his Terme before it begin, but before he enter, he cannot Surrender, nor have any action of trespasse, nor take a release.

He

He is bound to repaire the Tenements.

The Lessor may enter to see what Reparations or Waste there is, and he may distraine for his rent, or have an action of debt.

If Tenant for life or yeers granteth a greater estate then he hath himselfe, he doth forfeit his terme.

CHAP. XI.

Tenant at Will.

Tenant at Will, is hee that holdeth lands, or tenements at the Will of another.

THe Lessor may reserve a yeerly rent, and may distraine for it, or have an Action of debt; the Lessee is not bound to repaire the Tenements.

The Will is determined by the death of the

Leſſor, or of a woman Leſſee, by her marriage, or when the Leſſee will take upon him to doe that which none but the Leſſor may doe lawfully, it determineth the Will and Poſſeſſion, and the Leſſor may have an action of Treſpaſſe for it.

The Leſſee ſhall have reaſonable time to have away his goods, and his corne; but he ſhall loſe his Fallow, and his dung carried forth.

CHAP. XII.

REMAINDER.

A Remainder is the reſidue of an eſtate at the ſame time appointed over, and muſt be grounded upon ſome particular Eſtate given before; granted for yeeres, or for life, and ſo forth.

And ought to begin in poſſeſſion, when the particular eſtate endeth, there may be no

no meane time between; either by Grant, or Will.

No remainder can be of a Chattell perſonall; a Remainder cannot depend on a matter, *ex poſt facto*, as upon Eſtate tayle, upon condition, That if the Tenant in Tayle ſell, then the Land to remaine to another, is a void Remainder.

CHAP. XIII.

REVERSION.

A Reverſion is the reſidue of an eſtate, that is left after ſome particular eſtate, granted out in the Grantor, as if a man grant Lands for life, without further granting; the Reverſion of the Fee ſimple is in the Leſſor.

CHAP.

CHAP. XIV.

WASTE.

WASTE lyeth againſt a Tenant by the curteſie, for life, for yeeres, or in Dower, and they ſhall loſe the place waſted, and treble dammages.

Waſte lyeth not againſt a Tenant by *Elegit*, Statute-Merchant, or Staple; But account after the debt or dammage levied.

Waſte, nor account will lie againſt a Tenant in Mortgage, becauſe he had Fee conditionall.

Waſte is not given to the heire for Waſte in the life of his Father.

Waſte is given againſt the Aſſignee of the Tenant for life, or of anothers life, but not againſt the Aſſignee of a Tenant in Dower, or of the curteſie, it is to be brought againſt themſelves.

It is Waſte to pull up the fourmes, benches, doores, windowes, walls, Filbert-trees, or Willowes planted.

CHAP.

CHAP. XV.

DISCONTINUANCE.

DISCONTINUANCE is where a man that hath the present possession, by making a larger estate then he may, divesteth the inheritance of the Lands or Tenements out of another, and dyeth, and the other hath right to have them, but he may not enter because of such alienation, but is put to his Writ.

If a man seized in the right of his Wife, or if a Tenant in Tayle made a Feoffment, and dyed, the wife might not enter, nor the Issue in Tayle, nor he in Reversion, but are put to their action.

Now the wife may enter by the Statute, 32. *H.8.* and a recovery suffered by the Tenant by Curtesie, or by the Tenant after possibillity of Issue extinct, or for terme of life, is now made no discontinuance.

Such things that passe by way of a grant, by deed without livery, and seizin, cannot be

discontinued as a reversion, or Rent-charge, Common, &c.

A Release, or confirmation without Warranty, maketh no discontinuance.

CHAP. XVI.

DISCENTS.

DIscents which take away entries, is where a man disseizeth another, and dyeth, and his heire entreth, or maketh a Feoffment to another in Fee, or in tayle, and he dyeth, and his heire entreth; these discents put a man from his entrie.

A discent without a disseizin, doth not take away an entry, nor a disseizin without a discent.

A discent, during minority, marriage, *non sanæ mentis*, imprisonment, or being out of the Realme, doe not take away an entry.

Discents of Rents in grosse, the Lord notwithstanding may distraine.

A dying Seized of a terme for life, or of a Remainder, or Reversion, doth not take away

way an Entrie, he must die seized in Fee, and Frank-Tenement.

A diseizin cannot be to one joynt-Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a discent, the Donor Feoffor, or his heires may enter.

A wrongfull diseizin is no discent, unlesse the diseizor have quiet possession five yeeres without entrie, or claime. 32. H.8.

CHAP. XVII.

CONTINUALL CLAIME.

COntinuall Claime is a demand made by another of the propertie or possession of a thing which he hath not in possession, but is withholden from him wrongfully; it defeateth a discent, hapning within a yeere and a day after it is made, and now by the statute within five yeers.

CHAP. XVIII.

REMITTER.

REmitter is, when by a new title, the Franck-Tenement is caſt upon a man, whoſe entrie was taken away by a diſcent, or diſcontinuance, he ſhall be in by the elder title; as if Tenant in tayle diſcontinue the tayle, and after diſeizeth his diſcontinuance, and dieth thereof ſeized, and the land diſcend to his Iſſue, in that caſe he is ſaid to be in his Remitter, *viz.* ſeized his Ancient Eſtate tayle.

When the entrie of a man is lawfull, and he taketh an eſtate to himſelf, when he is of full age, if it be not by Deed indented, or matter of record which ſhall eſtop him, it ſhall be to him a good Remitter.

A Remitter to the Tenant ſhall be a Remitter to him in the Remainder, and reverſion.

CHAP.

CHAP. XIX.

TENURES.

ALL lands are holden of the King immediately, or of ſome other perſon, and therefore when any that hath Fee, dyeth without heire, the Lands ſhall eſcheate to the Lord.

And they are holden for the moſt part either by Knights ſervice, or in Soccage.

Knights Service draweth to it Wards, Marriage, and Reliefe:

Viz.

Of Ward, Marriage and Reliefe.

THe Heire male unmarried, ſhall be in Ward untill 21. yeers of age.

If he be married in the life of his Anceſtors, yet the Lord ſhall have the profit of the land till his full age.

None ſhall be in Ward during the life of the Father.

If the heire refuſe a convenient marriage, he ſhall pay to the Lord the value, when hee commeth to full age.

If the Ward marrie againſt the will of the Guardian, he ſhall pay him the double valew of his Marriage, but if the heire be of the full age aforeſaid, he ſhall pay a reliefe.

A reliefe for a whole Knights Fee, is 5l. for halfe a Knights Fee, 50s. for a quarter 25s. for more, more; for leſſe, leſſe, accordingly.

A Reliefe is no ſervice, but is incident to a Service, the Guardian muſt not commit Waſte. *viz.* Chattells.

Tenure in Soccage.

TEnure in Soccage is, where the Tenant holdeth of his Lord by fealty, ſuite of Court, and certaine rent for all manner of Service.

The Lord ſhall not have the Wardſhip, but a reliefe preſently after the death of his Tenant.

A Reliefe for Soccage land, is a yeeres rent, and is to be paid preſently upon a diſcent or purchaſe. As if the Land were held by Fealty, and 10s. Rent, *per annum*; 10s. ſhall be paid for Reliefe.

The next of the kin to whom the inheritance may not diſcend, ſhall have the Wardſhip of the Land, and of the heire, untill his age of 14. yeeres, to the uſe of the heire, at which

which age, the heire may call him to account.

If the Guardian die, the heire cannot have an Action of account against the Executor of the Guardian.

The Executor of the Guardian may not have the Wardship, but some other of the next of kin, the husband may not alien the interest of the Wife, in the Guardianship, nor hold it; if she die, it may not be sold.

If another man occupie the Lands of the heire, as warden in Soccage, the heire may call him to account, as Guardian.

If the Guardian hold the Lands, after the heire is 14. the heire shall call him to account, as his Bailiffe.

Gavill-kinde.

THe next of kin shall have the Guardianship of the body, and lands untill the heire be 15. yeeres of age.

Diversitie of ages.

A man hath but two ages.

The full age of Male and Female is, One and twenty.

A Woman hath sixe ages.

THe Lord her father may distraine for ayd for her marriage, when she is seven.

She is dowable at Nine.

She

She is able to assent to Matrimony at Twelve.

She shall not be in Ward, if she be fourteene.

She shall goe out of Ward at Sixteene.

She may sell or give her lands at 21.

No man may be sworne in any Jury, before he be 21. before which age, all gifts, grants, or deeds as doe not effect by delivery of his owne hands, are void, and all others voidable, except for necessary meat, drink, and apparrell, &c.

An Infant may doe any thing for his owne advantage, as to be Executor, or such like; an Infant shall sue by his next friend, and answere by his Guardian.

Gavill-kinde.

The heire may give, or sell at 15. yeeres of age.

1 *The land must discend, not be given him by Will.*

2 *He must have full recompence.*

3 *It must be by Feoffment, and livery of seizin with his owne hands, not by warrant of Attorney, nor any other conveyance.*

By

BY the Civill Law, an Infant may be Executor at 17. yeers of age.

An Infant may make a Will of his goods, at 14. yeeres, and a Maide at 12.

CHAP. XXI.

RENTS.

There are three manner of RENTS.

Rent-Service.
Rent-Charge.
Rent-Seck.

RENT-SERVICE is, where a man holdeth his lands of his Lord by certaine Rent, and so forth.

Rent-Charge is granted, or reserved out of certaine Lands by Deed, with a clause of distresse.

Rent-Seck, is a Rent granted without a distresse; or Rent service, severed from other service, becometh a Rent-Secke.

The Reversion of a Rent without a Deed, is voide if the Reversion be not in the reser-

vor, if a Rent be granted from the Reversion, it is a Rent Seck.

He which is not seized of a Rent-Seck, is without remedie for the same.

The Gift of a Peny by the Tenant, in name of seizin of a Rent-Seck, is a good possession, and seizin.

No Rent may be reserved upon any Feoffment, Guift, or Lease, but only to the Donor, and his heires, not to any stranger:

A Rent-charge is Extinct by the Grantees purchase of parcell of the land, but by the purchase of any of his Ancestors, it shall not, it shall be apportioned like Rent service, according to the value of the land; but if the whole Land discend of the same inheritance, the rent is extinguished.

By the grant of the Reversion, the rents and Services passe: If Rent be granted to a man without more; saying, he shall have it for terme of his life.

If the Lord accept of Rent or Service of the Feoffment, he excludeth himselfe of the Arrerages of the time of the Feoffment.

For a Rent-charge behinde, one may have an Action of anntity, or distraine.

Distresse.

For what, when, and where a man may distraine.

A man may diſtraine for a Rent-Charge, Rent ſervice, Herriot-ſervice, and all manner of Service, as

Homage.
Eſcuage.
Fealtie.
Suite of Court.
And Reliefe, &c.

HErriot cuſtome muſt be ſeized: and for Amerciaments, in a Leete, upon whoſe ground ſoever it be in the libertie, A man may not diſtraine for Rent, after the Leaſe is ended, nor have debt upon a Leaſe for life, before the eſtate of Franck-Tenement be determined.

A man may not diſtraine in the night, but for dammage Pheſant.

A man may not diſtraine upon the Poſſeſſions of the King, but the King may diſtraine of any Lands of his Grantee; or Patentee.

A man may not diſtraine the beaſts of a Stranger, that come by eſcape, untill they have been Levant, and Couchant on the ground, but for damage Feſans.

A man may not diſtraine the Oxen of the Plough, nor a Mil-ſtone, nor ſuch like that is for the good of the Common-Wealth, nor a

Cloke in a Taylors ſhop, nor victualls, nor corne in ſheafes, but if it be in a Cart, for dammage Feaſans.

A diſtreſſe muſt be allwayes of ſuch things, as the Sheriffe may make a Replevin.

A man may not ſever horſes joyned together, or to a cart.

If a man put cattell into a paſture for a weeke, and afterwards I. N. doth give him notice, that he will keepe them no longer, and the owner will not fetch them away. I. N. may diſtraine them, dammage Feaſans.

If a man take beaſts, damage Feaſant, and driving them by the high way to a pound, the beaſts enter into the houſe of the owner, and the taker prayeth the delivery of them, and the owner will not deliver them: a Writ of Reſcous lyeth.

If a man diſtraine goods, hee may put them where he will.

But if they periſh, he ſhall anſwere for them.

If cattell, they ought to be put in a common pound, or elſe in an open place, where the owner may lawfully come and feed them, and notice given to him thereof, and then if they die, it is in default of the owner.

Cattell taken damage Feſans, may be impounded in the ſame land; But goods or Cat-

tell taken for other things, may not.

Sheep may not be diſtreined, if there be a ſufficient diſtreſſe beſides.

No man ſhall drive a diſtreſſe out of the County wherein it was taken.

No Diſtreſſe ſhall be driven forth of the hundred, but to a Pound Overt within three miles.

A Diſtreſſe may not be impounded in ſeverall places, upon paine of five pounds, and treble damage.

Fees for impounding one whole Diſtreſſe, Foure pence.

The Executor or adminiſtrator of him which had Rent or Fee-Farme in fee, in Fee-tayle, or for life, may have debt againſt the Tenant that ſhould pay it, or diſtraine: and this is by the Statute 32. *H.* 8.

So may the husband after the death of his wife, his executor, or adminiſtrator. So may he which hath Rent for another mans life, diſtraine for the arrerages after his death, or have an action of Debt, 32. *H.* 8.

But if the Landlord will diſtrain the goods, or cattell of his Tenant, and doe ſell them, or worke them, or convert them to his owne uſe, he ſhall be Executor of his owne wrong.

CHAP. XXIII.

Diſeizin of Rents.

Three cauſes of Diſeizin of Rents Service.

Reſcous.
Replevin.
Incloſure.

Foure of Rent-Charge, Denyer, and incloſure.
Foreſtalling is a Diſeizin of all.

FOreſtalling is, when the Tenant doth with force, and armes, way-lay, or threaten in ſuch manner, that the Lord dareth not diſtraine, or demand the Rent.

Denyall is, if there be no diſtreſſe on the Land, or if there be none ready to pay the Rent, &c.

And of ſuch Diſeizins, a man may have an acti-

action of Novel diſeizin againſt the tenant, and Recover his Rent, and arrerages, and his dammage and coſts, and if the rent be behind another time, he ſhall have a Rediſſeizin, and recover double dammage.

Reſcous, and Pound-breach.

IF the Lord diſtraine when there is no rent nor ſervice behinde, the Tenant may not reſcue, otherwiſe if another diſtreine wrongfully, but no man may breake the Pound, although he did tender amends before the cattell were impounded.

If the Lord come to diſtraine, and ſee the beaſts, and the ſervant drive them out of his fee, the Lord may not have Reſcous, becauſe he had not the Poſſeſſion, but he may follow them, and diſtraine, but not damage feazans.

CHAP.

CHAP. XXIV.

COMMON.

COMMON is the right that a man hath to put his beasts to pasture, or to use, and occupy ground that is another mans.

There be divers Commons, *viz.* Common in grosse, Common appendant, Common appertinant, Common, because of neighborhood, *viz.* the termes of law.

The Lords of Wastes, Woods and pasture may approve against their Tenants and neighbours with common appertenant, leaving them sufficient Common, and pasture to their Tenants.

As if one Tenant, surcharge the Common, the other Tenants may have against him a Writ *de admensuratione pasturæ*; But not against him that hath Cõmon for beasts without number, neither may the Lord encloſe from such Tenants: if he do, the Tenant may bring an assize against him, and recover Treble dammage, but the Lord may have a *quo jure*, and make the Tenant shew by what title he claimeth.

CHAP.

CHAP. XXV.

WAYES.

The Kings high-way is that which leadeth from village to village.
A common high-way is that which leadeth from a village into the fields.
A private way, is that which leadeth from one certaine place unto another, 3.Ed.3.

IN the Kings high-way, the King hath onely paſſage for himſelfe and his people; and the Franck-tenement, and all the profits are in the Lord of the ſoyle, as they be preſented at the Leete.

Of a Common high-way, the Franck-Tenement and profits are to him that hath the land next thereto adjoyning, and if it be ſtopped, and I be damnified by it, I have no remedy, but by preſentment in the Leete.

If a private way be ſtraitned, or if a bridge there, which another ought to repaire, be

decayed, an action of the case lyeth; But if the way be stopped, an Assize of Nusance lyeth, and the Lessee may have it after the Lessors yeeres begin, or the Lessee may have an Action of the case: if the most part of a Water, or way, be stopped, an assize will lie.

CHAP. XXVI.

LIBERTIES.

A Libertie is, a royall priviledge in the hands of a subject.

ALl Liberties are derived from the Crown, and therefore are extinguished if they come to the Crowne againe by escheate, forfeiture, or such like, for the Greater doth drowne the Lesser.

One may have Park, a Leete Wayfe, stray, wreck of Sea, and *tenura placitorum*, by prescription, and without allowance in Eyre.

But not Cognizance of plea, nor *Cattalla fellonum, vel fugitinorum, aut utligatorum.*

A libertie may be forfeited by misusing, as to

to keepe a market otherwiſe then it is granted.

A Libertie may be forfeited for not uſing, when it is for the good of the Commonwealth; As not to exerciſe the Office of the Clarke of the Market; but not to uſe a market, is not.

Whatſoever is in the King, by reaſon of his Prerogative, may not be granted, or pardoned by generall words, but by ſpeciall.

CHAP. XXVII.

Of Chattells Reall.

Chattells Reall, are Guardianſhips, Leaſes for yeeres, or at Will, &c.

GUardianſhip is a Commodity of having the cuſtodie of the body, or lands, or both, where the heire is within age, and the Lord of whom the Land is holden, by Knights ſervice, ſhall have the ſame to his owne uſe, for it is a Chattell Reall, and therefore his Executor ſhall have it.

The Guardian must not doe waste, nor infeoffe, upon paine of loosing the Wardship. But he must maintaine the buildings out of the Issues of the lands, and so restore it to the heire.

If the Committee of the King, commit, the Wardship shall be commited to another; if the Grantee, he shall loose the Wardship.

And one of the friends of the Ward, being his next friend that will, may sue for him.

If a Lease be made to a man, and his heires for 20. yeeres, it is a Chattell, and his Executor shall have it; otherwise, if a man Will a Lease to a man and his heires, here the word Heires, are words of purchase, and his heires shall have it.

If a man grant, *Proximam advocationem*, to *I.S.* and his heires, it is but a chattell, for it is but for *unicâ vice*.

Writings pawned for money lent, are Chattells.

If a woman have execution of Lands by Statute-Merchant, and taketh a husband, he may grant it, for it is a chattell.

Of Chattells Personall.

CHattels Personall are gold, Silver, Plate, Jewells, utensills, beasts, and other chattell, and moveable goods whatsoever; Obligations, and Corne upon the ground.

All

All goods, as well moveable, as unmoveable, Corne upon the ground, Obligations, right of Actions, money out of bags, and corn out of sack, *Sunt Cattalla.*

Money is not to be passed by the grant of all his goods, and Chattells; nor Hawkes, nor Hounds, nor other things, *fere natura*, for the propertie is not in any, not after they are made tame, longer then they are in his Possession; as my Hounds following me, or my man, or my Hawke flying after a fowle, or my Deere haunting out of my Parke. But if they stray of their owne accord, it is lawfull for any man to take, and the heire shall have them.

All Chattells shall goe to the Executors; Fatts, and Furnaces fixed in a Brew-house, or Dy-house by the Lessee; If they be fixed by Tenant in Fee, the heire shall have them.

Now something hath been said concerning Possessions, it followeth, that it be shewed, how they may be conveyed from one man to another.

CHAP. XXVIII.

Of Conveyances.

In every Conveyance, there must be a Grantor, and a Grantee, and something granted.

The Conveyance of some persons is voide, of others voidable.

CONVEYANCE of a Woman Covert is voide, without the consent of her husband, and it ought to be made in her and his name, except it be done as Executor to another.

Of an Infant, that which doth not take effect with the delivery of his owne hands, is voide, and an Action of Trespasse will lie against him, for taking the things given.

Otherwise it is but voidable, except it be as Executor, or for necessary meate, and drinke, &c, for his advantage.

Void-

Voidable. { Of *non ſane memorie*, or made by *dureſſe*. } Royall.

VOydable by the parties themſelves, and their heires, and by them that ſhall have their eſtates, except *Non ſane* himſelf.

Grants by Fine.

VOydable by Writ of Error, by an Infant, during his nonage, and by the husband for a Fine levied by his wife alone, during their Marriage.

Conveyance of ſome perſons cannot be good for ever, without the conſent of others, as the Deane without the Chapter, The Major without the Commonaltie, and of other bodies politick, that have a common Seale, or of a Parſon without the Patron and Ordinary.

If there be no Condition in the Conveyance, it ſhall be intended the elder.

A Conveyance made to a feme Covert, ſhall be good, and of effect, untill her husband doe diſagree.

An Infant may be Grantee, ſo may a Woman Outlawed, a Villaine, a Baſtard, and a Fellon.

A Baſtard can have no heire, but the Iſſue of his body lawfully begotten.

An Infant at the age of diſcretion, by his actuall entry; and a woman againſt the will of her husband may be a diſeiſor, or a Treſpaſſor.

In all conveyances, there muſt be one named, which may take by force the grant, at the beginning of the grant.

A grant made to the right heirs of one that is dead, is good, or *Cuſtodibus Eccle.* is good for goods.

All Chattells, reall or perſonall, may be granted, or given without a Deed.

Rent-ſervice, Rent-Seck, Rent-charge, Common of Paſture, or of Turbarie, Reverſion, Remainder, advowſon, or other things, which lyeth not in manuall occupation, may not be conveyed for yeeres, for life, in tayle, or in Fee, without writing.

The Major, or Commonalty, or ſuch like, cannot make a Leaſe for yeeres, without a Deed.

CHAP.

CHAP. XXIX.

Of Deeds.

Three things needfull, and pertaining to every Deed, Writing, Sealing, and delivering.

IN the Writing must be shewed the persons names, their dwelling place, and degree. The things granted, upon what consideration, the estate, whether absolute, or conditionall, with the other circumstances, and the time when it was done.

No grant can be made, but to him that was partie to the Deed; except it be by way of Remainder.

The Words must be sufficient in Law to binde the Parties; As if a man grant, *omnia terræ certa sua*, a Lease for yeeres passeth not, but for Franck-Tenement, at least, *nec per omnia bona sua.*

A Baſtard can have no heire, but the Iſſue of his body lawfully begotten.

An Infant at the age of diſcretion, by his actuall entry; and a woman againſt the will of her husband may be a diſeiſor, or a Treſpaſſor.

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CHAP.

CHAP. XXIX.

Of Deeds.

Three things needfull, and pertaining to every Deed, Writing, Sealing, and delivering.

IN the Writing muſt be ſhewed the perſons names, their dwelling place, and degree. The things granted, upon what conſideration, the eſtate, whether abſolute, or conditionall, with the other circumſtances, and the time when it was done.

No grant can be made, but to him that was partie to the Deed; except it be by way of Remainder.

The Words muſt be ſufficient in Law to binde the Parties; As if a man grant, *omnia terras certa ſua*, a Leaſe for yeeres paſſeth not, but for Franck-Tenement, at leaſt, *nec per omnia bona ſua.*

Exceptio ſemper ultimo ponenda eſt.

THe *Habendum* muſt include the premiſſes.

A Condition cannot be reſerved, but by the Grantor, and it is proper to follow the *Habend.* preſently.

The *Habendum*, or Condition muſt not be Repugnant to the Premiſſes, if it be, it is void, and the Deed will take effect by the Premiſſes.

A Warrant is good, although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffers.

If it be raſed, or interlined in the date, or in any materiall place, it is very ſuſpitious.

Of Sealing.

A Writing cannot be ſaid to be a Deed, if it be not ſealed, although it be written, and delivered, it is but an Eſcrowe.

And if it were ſufficiently ſealed, yet if the Print of the Seale be utterly defaced, the Deed is unſufficient; it is not my Deed.

It may not be pleaded, but it may be given in Evidence.

Of

Of Delivery.

A Deed taketh effect by the delivery, and if the first take any effect, the second is voide.

A Jurie shall be charged, to enquire of the delivery, but not of the date, yet every Deed shall be intended to be made, when it doth beare date.

Diversitie in delivering of a WRITING.

As a Deed.
As Escrow.

THis Delivery ought to be done by the partie himselfe, or by his sufficient Attorney, and so it shall binde him, whosoever wrote, or sealed the same.

If one be bound to make assurance, he need not to deliver it, unlesse there be one to read it to him before.

And if any writing be read in any other forme to a man unlearned; It shall not be his Deed, although hee Seale and deliver it.

There are two ſorts of Deeds.

A Deed Poll, which is the Deed of the Grantor, a Deed indented, which is the mutuall Deed of either parties; but in Law, one is the Deed of the Grantor, and the other the counter-partie, and if any variance be in them, it ſhall be taken as it is in the Deed of the Grantor; and if the Grantor Seale only, it is good.

CHAP. XXX.

BARGAINES and SALES.

NO Manor-lands, Tenements, or other hereditaments can paſſe, alter or change, from one man to another, whereby an eſtate of Inheritance or Free-hold is made, or taketh effect in any perſon or perſons, or any uſe thereof is made, by reaſon only of any Bargain and Sale therefore, except the ſame be made by writing indented, ſealed, and inrolled in one of the Courts of Record at Weſtminſter, or within the ſame Court or Countie where the Tenements ſo bar-

bargained, doe lie, before the *Custos Rotulorum*, and two Justices of peace, and the Clark of the Peace, or two of them, whereof the Clarke of the Peace to be one, and that within 6. moneths after the date of such writing indented, 27. H. 8.

The inrollment shall be intended the first day of the Terme, and shall have relation to the delivery of the deed, against all strangers.

CHAP. XXXI.

FEOFFMENTS.

A Feoffment, is an estate made by delivery of Possession, and seizin by the party, or his sufficient Attorney.

A man cannot make livery of seizin, before he have the Possession.

A Joynt-Tenant cannot enfeoffe his Companion.

A Co-partner may make a feoffment of his part, or release.

A man cannot enfeoffe his wife.

A Disseizor cannot enfeoffe the Disseizee

for his entrie is lawfull upon the diſſe-zor.

Such Perſons as have Poſſeſſion in lands for yeers, or for life, &c. cannot take by livery, and ſeizin of the ſame Lands.

IF a Feoffment be made, and the Leſſee for yeeres give leave to the Leſſor to make Livery and ſeizin of the Premiſſes, ſaving to himſelfe his Leaſe, &c. and hee doth; the terme is not ſurrendred, for the Leſſee had an Intereſt which could not be ſurrendered without his conſent to ſurrender, and here his intent to ſurrender doth not appeare; wherefore he may enter, and have his terme, and the rent is renewed, but it is otherwiſe with a Leſſee for life, and the rent is extinct.

The Leſſor cannot make Livery and ſeizin againſt the Will of the Leſſee being on the Land; But he may grant the Reverſion, and if the Leſſee doe Attorne, the Free-hold will paſſe without Livery of ſeizin.

Live-

Livery of Seizin.

LIvery of seizin, is a Ceremonie used in Conveyance of Lands, that the Common people might kmow of the passing, or alteration of the estate: it is requisite in all Feoffments, guifts in the tayle, and Leases for life, made by deed, or without deed.

No Free-hold will passe without Liverie of seizin, except by way of Surrender, Partition, or exchange, or by matter of Record, or by Testament.

Livery of seizin must be made in the life time of him that made the estate.

Dona clandestina sunt semper suspitiosa.

BY Livery of seizin in one County, the Lands in another County will not passe.

Livery within view, is good, if the feoffee doe enter in the life time of the Feoffor.

Livery may not be made of an estate to begin in *Futuro*, for no estate in Franck-Tenement may be given in *Futuro*, but shall take effect presently, by Livery and Seizin.

Of

Of Uses.

THe Statute of 27. H. 8. hath advanced uses, and hath establiſhed fuertie for him that hath the Uſe, againſt his Feoffees; for before the Statute, the Feoffees were owners of the Land, but now it is deſtroyed, and the *ceſtyaq*; Uſe is owner of the ſame; Before the poſſeſſion ruled the Uſe, but ſince the Uſe governeth the Poſſeſſion, Indentures ſubſequent be ſufficient to direct the Uſes of a Fine or Recovery precedent, when no other Certaine and full declaration was made before.

Attorney.

AN Attorney ought to doe every thing in the name, and as the act of him which gave him the authoritie; As Leaſes in name of the Leſſor, but he muſt ſay, By vertue of his Letter of Attorney, I doe deliver you Poſſeſſion and ſeizin of, &c. for, &c.

An Attorney muſt firſt take poſſeſſion before he can make Livery of Seizin.

If an Attorney doe make Liverie of Sezin; otherwiſe then he hath warrant, then it is a diſeiziu to the Feoffor.

An Attorney muſt be made by writing ſealed, and not by word.

CHAP.

CHAP. XXXII.

EXCHANGE.

In Exchange, both the eſtates muſt be equall, there muſt be two Grants, and in every Grant, mention muſt be made of this word Exchange.

It may be done without Livery of Seizin, if it be in one Shire, or elſe it muſt be done by Indenture, and by this word Exchange, or elſe nothing paſſeth without livery.

EXCHANGE, importeth in the Law a Condition of Re-entry, and a Warranty voucher, and recompence of the other land that was given in Exchange; an Aſſignee cannot re-enter, nor vouch, but Rebate; Exchanger may re-enter upon an Aſſignee. And the ſame condition defeated in part, is defeated in the whole, and the ſame law is in partition.

CHAP. XXXIII.

GRANTS.

GRANTS must be certaine: A Grant to *I. S.* or *I. N.* is voide for the incertaintie, although it be delivered to *I. S.* The delivery of the Deed Will not make a voide Grant good, or to take effect.

The Lord cannot Grant the Wardſhip of his living Tenant; becauſe of the uncertaintie who ſhall be his heire, unleſſe he name ſome perſon.

When any thing is granted that is not certaine, as one of my horſes, then the choiſe is in the Grantee.

When ſeverall things are granted, then it is in the choice of him that is to doe the firſt Act.

A man cannot grant, nor charge that which he never had.

A man may charge a Reverſion.

A Perſon may grant his tythes, or the Wooll of his Sheep for yeeres.

A

A thing in action, a cauſe of a ſuite, right of entrie, or a Title for a condition broken, or ſuch like, may not be given or granted to a Stranger. But only to the Tenant of the ground, or to him that hath the Reverſion, or Remainder.

A thing that cannot begin without a Deed, may not be granted without a Deed; As a Rent-Charge, Fayer, &c. Every thing that is not given by delivery of hands, muſt be paſſed by Deed, the right of a thing Reall or perſonall, may not be given in, nor releaſed by word; A rent of condition, or a re-entrie may not be reſerved to one that is not partie to the Deed.

All things that are incident to others, paſſe by the grant of them, that they are incident unto.

A man by his Grant, cannot prejudice him that hath an elder title.

If no eſtate be expreſſed in the Grant, and Livery and ſeizin be made, then the Grantee hath but eſtate for life; But if there be ſuch Words in the Grant, which will manifeſt the Will of the Grantor, ſo his will be not againſt the law, the eſtate ſhall be taken according to his intent, and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome pur-

pose, and therefore reason would they should be construed to some purpose.

All Grants shall be taken most strong against him that made it, and most beneficiall to him to whom it is made.

To Grants of Reversion, or of Rents, &c. there must be Attornment, otherwise nothing passeth, if it be not by matter of Record.

Attornment.

ATtornment is the agreement of the Tenant to the Grant, by writing, or by Word; as to say, I doe agree to the Grant made to you, or I am well contented with it, or I doe Attorne unto you, or I doe become your Tenant, or I doe deliver unto the Grantee a peny, by way of seizin of a Rent, or pay, or doe but one service onely in the name of the whole; it is good for all.

It must be done in the life time of the Grantor.

Without Attornment, a Signiory, a Rent charge, a Remainder, or a Reversion, will not passe, but by matter of Record.

Without Attornment, services passe not by the sale of the Manor, nor from the Manor, but by bargaine and sale inrolled.

At-

Attornment must be made by the Tenant of the Free-hold, when a Rent-charge is granted.

By the Attornment of the Termor to the Grantee of a Reversion, with Liverie, and the Rent also, though no mention be made thereof: Before attornment a man may not distraine, nor have an action of waste.

By fine, the Lord may have the Wardship of the body, and Lands before the attornment of his Tenant.

The end of attornment, is to perfect a Grant, and therefore may not be made upon condition, or for a time.

A Tenant that is to perfect a Grant by Attornment, cannot consent for a time, nor upon a Condition, nor for part of a thing granted: But it shall enure the whole absolutely.

If the Tenant have true notice of all the Grante, then such Attornement is voide.

Attornment necessary upon a Devise.

CHAP. XXXIV.

LEASES.

A Leaſe for yeeres muſt be for a time certaine, and ought to expreſſe the terme, and when it ſhould begin, and when it ſhould end certainly; And therefore a Leaſe for a yeere, and ſo from yeere to yeere, during the life of *I. S.* but for two yeeres, it may be made by Word or Writing; If I Leaſe to *I. N.* to hold untill 100l. be paid, and make no livery of ſeizin, he hath eſtate only at Will.

A Leaſe from yeere to yeere, ſo long as both the parties pleaſeth, after entrie in any yeere, it is a Leaſe for that yeere, &c, till warning be given to depart. 14. *H.* 8. 16.

A Leaſe beginning from henceforth, ſhall be accounted from the day of the delivery: from the making, ſhall be taken incluſive from the day of the making, or of the date excluſive.

If

If Lands discend to the heire before his entrie, he may make a Leaſe thereof.

A man lets a houſe, *cum pertinent.* no lands paſſe, but if a man let a houſe, *cum omnibus terris eidem pertinent.* there the lands thereunto uſed paſſe.

If a man lets Lands, wherein is Coale-mines, quarrie, and ſuch like, if they have been uſed, the Tenant may uſe them, if they be not open, if the Tenant for them imploy them not on the Land, it is waſte, likewiſe Marle; the land is the place where the Rent is to be paid and demanded, if no other Place between the parties be limitted.

Treſpaſſe is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let lands without impeachment of Waſte, and a Stranger cut downe the trees, and the Leſſee doth bring an action of Treſpaſſe, he ſhall not recover for the value of the Trees, but for the Crop, and burſting of his cloſe, and the heire of the Leſſor ſhall have ſuch trees, and not the Executor of the Leſſee, unleſſe they be cut by the Leſſee, and enjoyed by the Grantee, without Waſte.

Leſſee for yeeres, or for life, Tenant in Dower, or by the curteſie, or Tenant in tayle after poſſibilitie, &c. have onely a ſpeciall inte-

intereſt or propertie in the trees, being upon the ground, growing as a thing annexed unto the Land, ſo long as they are annexed thereunto.

But if the Leſſee, or any other ſever them from the Land, the propertie and intereſt of the Leſſee in them, is determined, and the Leſſor may take them, as things that are parcell of his Inheritance, the Intereſt of the Leſſee being determined.

To accept the rent of a voide Leaſe, will not make the Leaſe good; But avoidable it will.

If the husband and wife doe purchaſe Lands to them and the heires of the husband, and he make a Leaſe, and die; his wife may enter, and avoide the Leaſe for her life, but if ſhe die, leaving the husband, who afterward dies, before the terme ends, the Leaſe is good to the Leſſee, againſt the heire.

Where it is Covenanted and granted to *S. I.* that he ſhall have Five Acres of land in *D.* for yeers, this is a good leaſe, for *conſeſſit* is of ſuch force as *dimiſit*.

If a man make a leaſe for 10. yeeres, and afterwards maketh another leaſe for 21. yeers, the latter ſhall be a good leaſe for 11. yeeres, when the firſt is expired.

If the Leſſee at his coſte, doe put glaſſe in the

the Windowes, he may not take the ſame away again, but he ſhall be puniſhed for Waſte; and ſo of Wainſcot, and ſeeling, if it be not fixed with Screwes.

Tenant in tayle may make a leaſe of ſuch lands or inheritance, as have been commonly letten to farme, if the old leaſe be expired, ſurrendered or ended, within one yeere after the making of the new; But not without impeachment of Waſte, nor above 21. yeeres, or three lives, from the day of the making, reſerving the old Rent, or more, 32. *H.* 8. By Indenture of Leaſe, by Tenant in tayle, for 21. yeeres, made according to the forme of the Statute, rendring the ancient, or more Rent. If the Tenant in tayle die, it is a good leaſe againſt his Iſſue; But if a Tenant in Tayle die without Iſſue; the Donor may avoid this Leaſe, by entrie, 32. *H.* 8. 28. And if he in the Remainder, doe accept the Rent, it ſhall not tye him, for that the Tayle is determined, the Leaſe is determined, and voided. *Ed.* 6. 19.

The huſband may make ſuch a Leaſe of his wifes lands by Indenture, in the name of the husband and wife, and ſhe to ſeale thereunto, and the rent muſt be reſerved to the husband and his wife, and to the heires of the wife, according to her eſtate of Inheritance.

A Leaſe made by the Husband alone, of the Lands of his Wife, is voide after his death; But the Leſſee ſhall have his corne.

By the huſband and wife, voidable, if it be not made as aforeſaid.

If a man doe let Lands for yeeres, or for life, reſerving a Rent, and doe enter into any part thereof, and take the profit thereof, the whole Rent is extinguiſhed, and ſhall be ſuſpended, during his holding thereof.

The acceptation of a re-demiſe, to begin preſently, is ſuſpenſion of the Rent, before any entrie; otherwiſe of a re-demiſe to begin in *futuro*.

Reſervations and *Exceptions*.

THere are divers words, by which a man may reſerve a Rent, and ſuch like, which he had not before, or to keepe that which he had, as *Tenendum*, *reſervandum*, *ſolvendum*, *faciendum*, it muſt be out of a Meſſuage, and where a diſtreſſe may be taken; and not out of a Rent: and it muſt be comprehended within the purport of the ſame Word.

Exceptions of part ought alwayes to be of ſuch things which the Grantor had in poſſeſſion at the time of the Grant.

The

The heire ſhall not have that which is reſerved, if it be not reſerved to him by ſpeciall words.

If a man make a Feoffment of Lands, and reſerve any part of the profits thereof, as the graſſe, or the Wood, that the Reſervation is voide, becauſe it is repugnant to the feoffment.

A man by a Feoffment, Releaſe, Confirmation, or Fine, may grant all his right in the Land, ſaving unto him his Rent-Charge, &c.

Things that are given only by taking, and uſing: As paſture for foure Bullocks, or two loades of Wood, cannot be reſerved, but by way of Indenture, and then they ſhall take effect by way of Grant, of the Grantor, during his life and no longer, without ſpeciall Words.

Exceptions of things, as Wood, Myne, Quarrie, Marle, or ſuch like; if they be uſed, it is implied by the Law, that they ſhall be uſed; and the things, without which they cannot be had, is implied to be excepted, although no, &c.

But otherwiſe, if they be not uſed, then the way, and ſuch like muſt be excepted.

An Aſſignee may be made of Lands given in Fee, or for life, or for yeeres, or of a Rent-

charge, although no mention be made of the Assignee in the Grant.

But otherwise it is of a promise, Covenant, or Grant, or Warranty.

If a Lessee doe assigne over his terme, the Lessor may charge the Lessee, or assigne at his pleasure.

But if the Lessor accept of the Rent of the Assignee, knowing of the assignement, he hath determined his exception, and shall not have an Action of debt against the Lessee, for Rent due after the assignment.

If after the assignement of the Lessee, the Lessor doe grant away his Reversion, the Grantee may not have an action of debt against the Lessee.

If a Lessee doe assigne over his interest, and die, his Executor shall not be charged for rent due after his death.

If the Executor of a Lessee doe assigne over his interest, an action of debt doth not lie against him for Rent due after the assignement.

If the Lessor enter for a condition broken, or the Lessee doe surrender, or the terme end, the Lessor may have an action of debt for the arrerages.

A Lease for yeers, vending rent, with a condition, that if the Lessee assigneth his

terme

terme, the Leſſor may re-enter. The Leſſee aſſigneth, the Leſſor receiveth the rent of the hands of the aſſignee, not knowing of the aſſignment, it ſhall not exclude the Leſſor of his entrie.

A thing in a Condition may be aſſigned over for good cauſe, as juſt debt: as whereas a man is indebted unto me in 20. pound, and another doth owe him 20. pound, he may aſſigne over his Obligation unto me, in ſatisfaction of my debt, and I may juſtifie the ſuing for the ſame, in the name of the other, at my owne proper coſts and charges.

Alſo where one hath brought an action of debt againſt *I.N.* which promiſeth me, that if I will ayde him againſt *I.N.* I ſhall be paid out of the ſumme, in demand I may aide him.

An aſſignee of Lands, if he be not named in the condition, yet he may pay the money to ſave his Land.

But he ſhall receive none, if hee be not named; the tender ſhall be to the Executor of the Feoffees.

Aſſignee ſhall alwayes be intended, he that hath the whole eſtate of the Aſſignor, that is aſſignable; A Condition is not aſſignable, and not of an Executor, or Adminiſtrator: if there be ſuch an Aſſignee, the law will not allow an Aſſignee in the law, if there be an aſ-

ſignee indeed; ſo long as any part of the eſtate remaineth to the Aſſignor, the tender ought to be made to him or his heires, it ſerveth; yet a colourable payment to the heire, ſhall not veſte the eſtate out of the Aſſignee, as a true payment will, *viz.* Covenant.

CHAP. XXXVI.

SURRENDERS.

A Surrender is an Inſtrument teſtifying with apt words, that the particular Tenant of Lands, or Tenements for life, or yeeres, doth ſufficiently conſent, that he which hath the next immediate Remainder, or Reverſion thereof, ſhall alſo have the particular eſtate of the ſame in poſſeſſion; and that hee yeeldeth, or giveth the ſame to him for ever; Surrender ought forthwith to give a preſent Poſſeſſion of the thing Surrendred, unto him which hath ſuch an eſtate, where it may be drowned.

A Joynt-Tennant cannot ſurrender to his fellow.

Eſta-

Eſtating of things that may not be granted without a Deed, may be determined by the Surrender of the Deed to the Tenant of the Land.

Leaſe for yeers cannot ſurrender before his terme begin, he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners;

In *Deed.*
In *Law.*

A Surrender in law, is when the Leſſee for yeeres doth take a new Leaſe for more yeeres.

A Surrender in Deed, muſt have ſufficient words to prove the aſſent, and will of the Surrenderer to ſurrender; and that the other doe alſo thereunto agree.

The Huſband may Surrender his wifes Dower for his life, and her Leaſe for ever.

By Deed indented, a man may Surrender upon condition.

CHAP.

CHAP. XXXVII.

RELEASES.

A Releaſe, is the giving, or diſcharging of a Right, or Action which a man hath, or claimeth againſt another; or out of, or in his Lands.

A Releaſe or Confirmation made by him, that at the time of the making thereof had no right, is voide; if a right come to him afterwards, unleſſe it be with warranty, and then it ſhall bar him of all right that ſhall come to him after the warranty made.

Releaſe, or Confirmation made to him that at the time of the Releaſe, or Confirmation made, had nothing in the Lands, is voide, it behoveth him to have a Free-hold, or a poſſeſſion and privitie.

A Releaſe made to a Leſſee for yeers, before his entrie, is voide.

A

A man may not releaſe upon a Condition, nor for a time, nor for part; But either the Condition is voide, and the time is voide, and the Releaſe ſhall enure to the partie to whom it is made for ever, for the whole, by way of extinguiſhment: But a man may deliver a Releaſe to another, as an Eſcrowe, to deliver to *I. S.* as his Act and Deede, if *I. S.* doe performe ſuch a thing, or Releaſe upon a condition by Deed indented, may be good.

A Joynt tenant or a Rent-charge, may releaſe, yet all the Rent is not extinct, nor yet if he purchaſe the lands, his fellow ſhall have the Rent ſtill.

If the Grantee releaſe parcell of a Rent-charge to the Grantor, yet all the Rent is not extinct.

A Releaſe to charge an eſtate, ought to have theſe words, Heires, or words to ſhew what eſtate he ſhall have.

A Releaſe made to him that hath a Reverſion, or a Remainder in Deed, ſhall ſerve and helpe him that hath the Frank-tenement; So ſhall a Releaſe made to a Tenant for life, or a Tenant in Tayle, inure to him in the Reverſion, or Remainder, if they may ſhew it, and ſo to Treſpaſſors, and Feoffees, but not to Diſſeizors.

A Releaſe of all manner of Actions doth not take away an entrie, nor the taking of ones Goods againe, nor is any Plea againſt an Executor.

A Releaſe of all demands, extinguiſheth all Actions Reall and Perſonall, appeales Executions, Rent-charge, Common of Paſture, Rent-Service, and all right, and Seizure, and all right in Lands, and propertie in Chattells: But not a poſſibilitie, or future duty, as a Rent payable after my death, and ſuch like.

CHAP.

CHAP. XXXVIII.

CONFIRMATION.

Confirmation, is when one ratifieth the Poſſeſſion, as by Deed to make his Poſſeſſion perfect; or to diſcharge his eſtate, that may be defeated by anothers entrie.

AS if a Tenant for life, will grant a Rent-Charge in Fee, then he in the Reverſion may confirm the ſame Grant.

Whereas a man by his entrie, may defeate an eſtate; there by his Deed of Confirmation, he may make the eſtate good.

A Confirmation cannot charge an eſtate that is determined by expreſſe Condition, or limmitation; To confirme an eſtate for an houre, if it be for Tenant for life, it is

good for life; If to Tenant in Fee, for ever.

A Leaſe for yeeres may be confirmed for a time, or upon condition, or for a piece of the Land; But if a Franck-tenement be, it ſhall enure to the whole abſolutely.

A Confirmation to charge an eſtate, muſt have words to ſhew what Eſtate hee ſhall have.

To confirme the Eſtate of Tenant for life, to his heires, cannot be but by *Habendum*, the Land to him and his heires: And therefore it is good to have ſuch a *Habendum* in all confirmations.

In a Confirmation, new ſervice may not be reſerved, old may be abridged.

A Confirmation made to one Diſeizor, ſhall be voidable to the other, ſo ſhall not a Releaſe.

CHAP.

CHAP. XXXIX.

CONDITION.

There are two manner of Conditions, one expreſſed by Words, another implyed by the Law, the one called a Condition in Deed, the other, a Condition in Law.

ESTATES made, and the condition againſt the law, the Eſtate's good, the Condition's voide.

If the State beginneth by the Condition, then both are voide.

Bonds with Conditions, expreſly againſt the Law, are voide.

Conditions repugnant, the eſtate good, the Condition voide.

Conditions impoſſible, are voide, the Eſtate good; it ſhall not enlarge any eſtate.

By pleading, a man may not defeate an Eſtate of Franck-Tenement, by force of a condition:

dition in Deed; without he ſhew the Condition of Record, or in writing ſealed; yet the Jurie may helpe a man, where the Judges will take their Verdict at large: of Chattells he may.

Promiſe doth make a Condition; but when it doth depend upon another ſentence, or hath reference to another part of the deed; it maketh no condition, but a quallification, or limitation of the ſentence, or of that part of the Deede, as provided, that the perſon of the Grantee ſhall not be charged.

He which hath intereſt in a Condition, may fulfill the ſame for ſafeguard of himſelfe.

Between the parties, it is not requiſite the Condition be performed in every thing, if the other doe agree, but to a Stranger it muſt.

If the Obligee be partie to any Act, by which the Condition cannot be performed; then the Obligor ſhall be diſcharged; So he ſhall be by the Act of the Condition.

Where the firſt Act in the Condition is to be performed by the Obligee, and he will not doe it, there the Obligation is not forfeited.

Where no time is ſet, if the Condition be for the good of a ſtranger, or of the Obligee, then

then it is to be performed within convenient time, if for the good of the Obligor, at any time during their lives; Immediately, ſhall not have ſuch a ſtrict conſtruction; but that it ſhall ſuffice, if it be done in convenient time.

If a man be bound to pay money, or farme Rent, he muſt ſeek the parties: But if he be bound to performe all payments, if he tender his farme on the land, it ſufficeth.

If the Feoffee, or Feoffor die before the day of payment, the tender ſhall be to the Executor, although the heire of the Feoffee doe enter, if the heire be not named, *vide*, Aſſignee in aſſignment.

The money muſt be tendred ſo long before Sun-ſet, that the receiver may ſee to tell it.

To pay part of a Summe at the day, cannot be ſatisfaction for the whole ſumme, as a horſe or a Roabe is. But before the day, or at another place, at the day of the requeſt, and acceptance of the Obligee, is full ſatisfaction.

An Acquittance is a good barre, if nothing be paid.

In all caſes of Conditions, a payment of a certaine ſumme in groſſe, touching Lands, or Tenements, if lawfull tender be once refuſed, he which made the tender is diſcharged for ever.

And

And the manner of the tender, and payment ſhall be directed by him that made it, and not by him that did accept it, as that hee paid the ſumme in full ſatisfaction, and that he accepted thereof in full ſatisfaction.

An acquittance is a good bar,&c.

Where a man is bound to pay money, to make a Feoffment, or renounce an Office, or the like, and no time is limited when he ſhall doe it, then upon requeſt, he is bound to performe it, in ſo ſhort a time as he may.

But where the time is limitted, if hee doe refuſe before the day, it is no matter, if he be readie to performe it at the day.

Where a Covenant or Condition is to marry or Enfeoffe a ſtranger by ſuch a day; the refuſall of the Stranger, is no Plea, as that of the Obligee is; The Obligee is to be ready on the Land, at his owne perill; a Stranger muſt be requeſted: if he refuſe, the Obligation is forfeited; wherefore it is good to have theſe words, if the Stranger doe thereunto aſſent.

Entrie.

THe determination of an eſtate is not effected before entrey.

When any perſon will enter for a Condition

tion broken, hee must be seised on the same course and manner, he was when he departed from his possession.

It behoveth such persons as will re-enter upon their Tenants to make a demand of the rent.

If the Lessor demand before he dye, his heire may enter.

If the Lessor distraine he may not re-enter.

The Lessor may accept of the rent, and yet re-enter: but if he receive the next rent he may not, for that establisheth the Lease.

Entry into one acre in the name of more, is good; it doth not extend into two Counties.

By the Entry of the husband, the Franck-tenement shall be in the wife, and so of such like.

In Gavill kinde Land, the eldest sonne only shall enter for the breach of a Condition.

Demand.

THE Land is the place where the rent is to be paid and demanded, if there be no other place appointed.

And there the Lessor himselfe, or his suf-

 fici-

ficient Attorney, a little before Sun set in the presence of two or three sufficient witnesses, shall say, here I demand of *J. B.* 10. l. due to me at the Feast of, &c. for a Messuage, &c. Which he holdeth of me in Lease by Indenture, &c. and there remaine; the last day the rent is due to be paid untill it be dark, that he cannot see to tell the money.

CHAP. XL.

WARRANTIES.

There are three manner of Warranties.

Lineall.
Collaterall.
by Discent.

WArranty Lineall is where a man by his Deed bindeth him and his heires to Warranty and dyeth, and the Warranty doth discend to his issue.

Warrantie Collaterall is in another line, so that he to whom it discendeth cannot convey the

the title that he hath in the Tenements by him that made Warranty.

Warranty by Diſſeiſin is where he which hath no right to enter, entreth, and maketh a warranty: this is by Diſſeiſin, and barreth not.

Lineall Warranty barreth him that claimeth Fee, and alſo Fee-taile with Aſſets in Fee; if he ſell, his ſonne may have a formedon.

Collaterall Warranty is a barre to both, except in ſome Caſes that bee remedied by Statute, as Warranty by Tenement, by the curteſie, except he hath enough by diſcent, by the ſame Tenement.

Tenant,

In dower, for life, not remedied, but doe barre the heire, and him in reverſion.

A Warranty diſcendeth alwaies to the heir at the Common law, *viz.* the eldeſt Son, and followeth the eſtate, and if the eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond ſonne in Gavill kinde although all the ſonnes ſhall be vouched, and not the eldeſt alone. Yet he only ſhall be barred.

To plead a Warranty against him that made it, or his heires, is called a Rebutter.

Where Fee, or Franck-tenement is Warranted, the party shall have no advantage, if he be not Tenant.

Where a Lease for yeers is warranted, it shall be taken by way of Covenant, and good, if he be outed.

The Feoffor by the words *dedi & concessi*, shall be bound to warranty, during his own life.

CHAP. XLI.

COVENANTS.

COvenants are of two sorts; expressed by words in the Deed, or implyed by the Law. A Covenant in Deed, is an agreement made by the Deed in writing, between two persons to perform some things and sealed: for no writ of Covenant is maintainable, without such a specialty, but in *London*, &c.

When a Covenant doth extend to a thing in being parcell of the demise, or thing to be done

done by force of the Covenant is *quodamodo*, annexed, or appertaining to the thing demised, and goeth with the land, it shall binde the assignee, if he be not named: as to repaire the houses, it shall binde all that shall come to the same by the act of the law, or by the act of the party.

But if the Covenant doe concern the land, or thing demised in some sort, the Assignee shall not be charged, although he be named; as to make a Wall at another bodies house, or to pay a summe of money to the Lessor, or to a stranger; But the Lessee his Executors and Administrators shall be charged.

If the Covenant doe extend to a thing that had no being, but to be made new upon the Land, it should binde the Assignee, if he be named, because he shall have the benefit of it.

If a man make a Lease for yeares, and the Lessee covenanteth and granteth to pay, &c. to the Lessor his heires and assignes, yearely during, &c. ten pound, his Executors shall have it.

A Covenant in Law, upon a demise, or grant, the assignee in Deed or in law may have a Writ of Covenant.

An Obligation to performe all Covenants and grants is forfeit on the breach of a Covenant in Law.

A Covenant in Law is not broken but by an elder title.

A Covenant in Law may be qualified by the mutuall consent of the parties.

CHAP. XLII.

How Chattels perſonall may be bargained, ſold, exchanged, lent and reſtored.

A Contract is properly where a man for his money ſhall have by the aſſent of another, certaine goods, or ſome other profit at the time of the contract, or after.

In all Bargaines, Sales, Contracts, Promiſes, and Agreements, there muſt be *quid pro quo*, preſently, unleſſe day be given expreſly for the payment, or elſe it is nothing but communication.

If a man doe agree for a price of wares, he may not carry them away before he hath paid for

for them, if he have not day expreſly given him to pay for them.

But the Merchant ſhall retaine the wares untill he be paid for them, and if the other take them, the Merchant may have an action of treſpaſſe, or an action of debt for the money at his choice.

If the bargaine be that you ſhall give mee ten pound for my horſe, and you doe give me a penny in earneſt, which I doe accept: This is a perfect bargaine, you ſhall have the horſe by an action of the Caſe, and I ſhall have the money by an action of Debt.

If I ſay the price of a Cow is foure pound, and you ſay you will give me foure pound and doe not pay me preſently, you may not have her afterwards, except I will; for it is no contract. But if you goe preſently to telling of your money, if I ſell her to another, you ſhall have your action of the Caſe againſt me.

If I buy one hundred loades of wood to be taken in ſuch a Wood at the appointment of the vendor, if he upon requeſt will not aſſigne them unto me, I may take them, or I may ſell them; But if a ſtranger doe cut down any part of the trees, I may not take them; But I may ſupply my Grantee of the reſidue, or have my action of the Caſe.

If

If the bargaine be, that I ſhall give you ten pounds for ſuch a Wood, if I like it upon the veiw thereof, this is a bargaine at my pleaſure upon my view; and if the day be agreed upon, if I diſagree before the day, if I agree at the day, the bargaine is perfect, although afterwards I doe diſagree. But I may not cut the wood before I have paid for it; If I doe, an action of Treſpaſſe will lie againſt me, and if you ſell it to another, an action of Treſpaſſe on the Caſe will lie againſt you.

If I ſell my horſe for money, I may keepe him untill I am paid, but I cannot have an action of debt untill he be delivered; yet the properrie of the horſe is by the bargaine in the bargainor, or buyer; but if he doe preſently tender me my money, and I doe refuſe it, he may take the horſe, or have an action of detainment. And if the horſe die in my ſtable between the bargaine and the delivery, I may have an action of debt for my money, becauſe by the bargaine the propertie was in the buyer.

If a Deed be made of Goods and Chattels, and delivered to the uſe of the Donee, the property of the Goods and Chattels are in the Donee preſently: before any entry, or agreement, the Donee may refuſe them if he will.

If

If I take a Horſe of another mans, and ſell him; and the owner take him againe: I may have an action of Debt for the money, for the bargaine was perfect by the delivery of the Horſe, *Et caveat Emptor.* Every Contract importeth in it ſelfe an aſſumption: for when one doth agree to pay money, or deliver a thing upon conſideration, he doth as it were, aſſume and promiſe to pay and deliver the ſame and therefore, when one ſelleth any goods to another, and agreeth to deliver them at a day to come: and the other in conſideration thereof, agreeth to pay ſo much money on the delivery, or after; in this Caſe, he may have an action of Debt, or an action on the Caſe upon the aſſumption.

The duty to reſigne an action perſonall may not be apportioned, as if I ſell my Horſe and another mans for ten pounds, who taketh his Horſe againe, I ſhall have all the money.

If a man retained a ſervant for 10.l. *per annũ*, and he depart within the year, he can have no wages: if it were to be paid at two Feaſts, and the man after the firſt Feaſt die, he ſhall have wages but for the firſt Feaſt, therefore men take order for it in their Wils.

By a Contract made in a Faire or Market, the property is altered: Except it be to the King, ſo that the buyer know not of the former propertie, and doe pay, tole, and enter

it; and those things as thereupon ought to be done, it must be on the Market, & at the place where such things are usually sold, as Plate at the Gold smiths stall, and not in his Inner shop.

In exchange of a Horse for a Horse, or such like, the bargaine is good without giving of day or delivery.

If a thing be promised, by way of recompence for a thing that is past; it is an rather accord than a contract, & upon an accord, there lieth no account, but he unto whom the promise is made have may charge, by reason of the promise, which he hath also performed; then he shall have an account for the thing promised, though he that made the promise have no profit thereby; as if a man say to another man, heale such a poore man, or make such a high way, &c.

The intent of the party shall be taken according to the Law, as if a man retaine a servant, and doe not say one yeere or how long he shall serve him, it shall be taken for one yeere, according to the Statute.

In all contracts he that speaketh obscurely, or ambiguously is said to speake at his own perill, and such speeches are to be taken strongly against himselfe.

CHAP.

CHAP. XLIII.

Of Lending and Reſtoring.

IF Money, Corn, Wine, or ſuch other things, which cannot be redelivered, if it be occupied or be borrowed: If it perll, it is at the periſh of the borrower.

But if a Horſe, or a Cart, or ſuch other things, as may be uſed, and delivered againe, be uſed in ſuch manner as they were lent, if they periſh, he that oweth them ſhall beare the loſſe, if they periſh not through the default of him that did borrow them, or that he did make a promiſe at the time of delivery, to redeliver them ſafe againe. If they bee occupied in any other wiſe than according to the lending, in what wiſe ſoever it periſh; If it be not in default of the owner, he that did borrow them, ſhall be charged with them, in Law and Conſcience.

If a man have goods to keep to a certaine day, he ſhall be charged, or not charged after, as default or defaults is in him.

But if he have any thing for keeping them

safe, or make promise to redeliver them, he shall be charged with all chances that may fall because of his promise.

If a man finde goods of another mans, if they be hurt or lost by the negligence of him that found them, he shall be charged to the owner.

If a common Carrier goe by waies that be dangerous for robbing, and will drive by night, or other unfit time, and is robbed; or if he doe overcharge his horse, or driveth so that his stuffe fall into the Water, or otherwise be hurt by his default, hee shall be charged by his default.

And if a Carrier would percase refuse to carry, unlesse a promise were to him, that he shall not be charged with any such misdemeanours, that promise were void.

Every Inholder is bound by the Law, *bona & catalla* of his Guest to keep in safety, so long as it is within the Inn, if the Guest did not deliver them unto him, nor acquaint him with them.

He shall not bee charged if the Servant or Companion of the Guest doe imbesill them; or if the Guest doe leave them in the outward Court.

The Ostler shall not answer for the Horse that is put to pasture at the request of the Guest;

Gueſt: but if he doe it of his own head, he ſhall.

If a man offer to take away my Goods, I may lay my hands upon them, and rather beat him, than ſuffer him to take, or carry them away.

CHAP. XLIIII.

How farre other mens contracts and miſdemeanors doe binde us.

A Man ſhall be bound by many Treſpaſſes of his wife, but not to ſuſtaine corporall puniſhment for it.

For Murder, Fellony, Battery, Treſpaſſe, borrowing or receiving of money in his Maſters name, by a Servant, the Maſter ſhall not be charged unleſſe it be done by his command, or came to his uſe by his aſſent.

If I command one to doe a Treſpaſſe, I ſhall be a Treſpaſſor, or otherwiſe if I doe but con-

ſent: There is no acceſſary in Treſpaſſe.

Wee ſhall be charged if any of our family lay or caſt any thing into the high way, to the noiſans of his Majeſties Liege people.

Every man is bound to make recompence, for ſuch hurt as his beaſts ſhall doe in the corn or graſſe of his neighbour, though he knew not that they were there; and for his Dogs, Bares, &c. if they hurt the goods or Chattell of any other, for that he is to govern them.

A man ſhall not be charged by the contract of his wife or his ſervant, if the thing come to his uſe, having no notice of it: But if he command them to buy, he ſhall bee charged though they come not to his uſe; or had notice thereof.

If a Wife or Servant uſe to buy and ſell, if he ſell his Maſters Horſe, and exchange his Oxe for wheat that commeth to his Maſters uſe, his Maſter may not have an action of Treſpaſſe for it, but he ſhall be charged for the Corn, and the other need not to ſhew that he had warrant to buy for him.

If a man ſervant that keepeth his ſhop, or that uſeth to ſell for him, ſhall give away his goods he ſhall have treſpaſſe againſt the Donee.

But if I deliver my Goods to another to keep to my uſe, and he doe give them away, I ſhall not: for the Donee had notice whoſe goods

goods they were, as in the case of the Servant.

If a man make another his generall receiver, which receiveth money, and maketh an acquittance, an payeth not his Master; yet that payment dischargeth the debtor.

If a Servant keepe his Masters fire negligently, and action lyeth against the Master: Otherwise, if he beare it negligently in the street.

If I command my servant to distraine, and he doth ride on the distresse; he shall be punished, not I.

If a man command his Servant to sell a thing that is defective, generally to whom he can sell it; deceipt lyeth not against him: Otherwise if he bid him sell it to such a man, it doth.

A Contract or a promise made to the wife is good, when the husband doth agree, so it is to a Servant; and it shall be said to be made to the Husband and Master himselfe.

If a man taketh a Wife that is in debt, he shall be charged with her debts, during her life; if she dye, he shall be discharged.

CHAP.

CHAP. XLV.

Wills and Testaments.

Having hitherto treated of such contracts as doe take effect in the life time of the parties, with their differences, it is now to deale with Instruments which take effect after their Deaths; that those things which they have preserved with care, and gotten with paines in their life, might be left to their posterity in peace and quietnesse after their Death: of which sort are last Wills and Testaments.

There are two sorts of Wils; Written and Nuncupative.

A Nuncupative Testament, is when the Testator doth by Word onely, without writing declare his Will, before a sufficient number of Witnesses, of his Chattels onely: for Lands passe not but by writing

writing; It may for the better continuance after the making, be put in writing, and proved: But it is ſtill a Teſtament Nuncupative.

A written Teſtament is that which at the very time of the making thereof is put in writing, by which kind of Teſtament in writing, only Lands and Tenements paſſe, and not by word of mouth only.

Two things are required to the perfection of a Will, by which Lands paſſe, *viz.* Firſt, writing which is the beginning. Secondly, the death of the deviſor, which is the finiſhing.

In a Will of Goods, there muſt be an Executor named; otherwiſe of Lands.

A man may make one Executor or more ſimply, or conditionally for a time, or for parcell of his Chattels.

If no Executor be named, then it ſtill retaineth the name of a laſt Will, and ſhall bee annexed to the Letters of Adminiſtration in regard of the Gift.

Gavill kinde Lands may be deviſed by cuſtome.

Lands { *In Socage tenure* } *all* } *is deviſable*
holden { *Knights Service* } *2 parts* } *3* } *by writing.*

FEare, fraud, and flattery, three unfit accidents to be at the making of a Will.

A woman may make a Will of the goods of her husband by his conſent and licence, by Word is ſufficient, and of the goods ſhe hath as Executor; without his conſent; but ſhee cannot give them unto him.

A boy after his age of foureteen, and a maide after her age of twelve, may make a Will of their goods and chattels by the Civill Law.

The Will of the Donor, ſhall be alwaies obſerved, if it be not impoſſible, or greatly contrary to the law.

A Deviſor is intended *Inops conſilii*, and the Law ſhall be his Councell, and according to his intent appearing in his Will, ſhall ſupply the defect of his Words.

A Prerogative Will is five pound in another Dyoceſſe.

A man may not traverſe the Probate of a Teſtament or Letters of Adminiſtration directly, but he may ſay againſt the Teſtament that

that the Testator never made the party his Executor.

CHAP. XLVI.

DEVISES.

A Devise ought to bee good and effectuall at the time of the death of the Devisor.

The Devisee may not enter into the terme, or take a Chattell, but by the delivery of the Executor.

But he may sue for it in Court Christian.

Into Franck tenement, or inheritance he may enter.

Devisees are purchasees, as if a Lease for yeeres be Willed to a man and his heires, the heire shall have it; for Heire is a name of purchase here.

A Reversion of Lands or Tenements will passe by the name of Lands and Tenements in a Devise.

If a man devise all his Lands and Tenements; a Lease for yeeres doth not passe,

what he hath Lands in Fee, and also a Lease there, otherwise it will.

If a man deviſe all his goods, a Rent charge which he had for yeeres will paſſe, and all other his perſonall Chattels.

And if a man give all his moveables to one, he ſhall have all his Horſes Cattell, pans and perſonall Chattels; and all his immoveables: to another, he ſhall have all his Corn growing, and fruit on his Trees, and the Chattels reall.

A man may deviſe Lands or Goods to an Infant in the mothers belly, or goods to the Church-wardens of D.

There is great diverſity where the property is deviſed, and when the occupation is deviſed: A man may deviſe that a man ſhall have the occupation of his Place, or other Chattels during his life; or for yeeres, and if he dye within the terme, that it ſhall remaine to *M. A.* and it is good, for the firſt hath but the occupation, and the other after him ſhall have the property.

But if a Chattell be given to one for life, the remainder to another, the remainder is void.

For a Grant or Deviſe of a Chattell for an houre, is good forever; and the Deviſee may diſpoſe of it; But if he doe not, the other ſhall have it.

A man

A man may Deviſe his Lands he holdeth in Leaſe, but not his Leaſe, under this condition; Provided, that if the Deviſee dye within the terme, then he ſhall have it.

If a man Will his goods to his wife, and that after her deſceaſe, his ſonne and heire ſhall have the houſe wherein they are; ſhee ſhall have the houſe for term of her life, yet it is not deviſed unto her by expreſſe words. But it doth appeare that his intent was ſo by the words.

If a man willeth his Lands to his Wife, till his ſonne commeth to the age of 21 yeeres, and the woman taketh another husband, and dyeth, the other huſband ſhall have the Intereſt.

By a deviſe a man may have the Fee ſimple without expreſſe words of Heirs, as if lands be willed to a man for ever, or to have and to hold to him and to his aſſignes, &c.

By Will Lands may bee intailed without the word, Body: as if Lands be given to a man, and to his heires males, it doth make an eſtate tayle.

If a man Will that his Executors ſhall ſell his Lands, the inheritance doth diſcend to the heire; yet the Executors may enter, and enfeoffe the Vendee.

And if Lands be given to the Executors to

ſell, and they receive the profits thereof to their owne uſe, and doe not ſell the ſame in reaſonable time, the heire may enter.

An Executor may ſell, if the other will not.

If lands be recovered againſt Tenant for life or for yeares, by an action of Waſte, or former title, he may not give his Corne.

If the Cognizee have ſowne the Lands, and the Cognizor bring a *ſcire*: he may give the Corn ſowne.

If a man devſe *omnia bona & Cattella*, Hawkes nor Hounds doe not paſſe, nor the Deer in the park, nor the Fiſh in the Ponds.

CHAP. XLVII.

EXECUTORS.

AN Executor is he that is named and appointed by the Teſtator, to be his ſucceſſor in his ſtead to enter, and to have his goods and Chattels, to uſe Actions againſt his Debtors, and Legaties, ſo farre as his goods and Chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth refuſe, notwithſtanding hee that refuſeth may ad-

administer at his pleasure, and the other must name him in every action, for every duty due to the Testator, and his release shall be a good barre: if he doe survive he may administer, and not the Executor of him that dyed; but otherwise if all had refused.

If one prove the Will in the name of both, he that doth not Administer, shall not be charged.

If the Executor doe once any action that is proper to an Executor, as to receive the Testators debts, or to give acquittance for the same, &c. he may not refuse.

But other acts of charity or humanity, he may doe; as to dispose of the Testators goods, about the funerall, to feed his catell least they perish, or to keep his goods, least they be stoln, these things may every one doe, without danger.

When Executors doe bring an action it shall be in all their names, aswell of them that doe refuse as of other.

But an action must be brought against him that doth administer only, and he which first commeth shall first answer.

An Executor of an Executor, is Executor to the first Testator. And shall have an action of debt, accompt, &c. or Trespasse, as of the goods of the first Testator carryed away,

and

and execution of Statutes & Recognizances, &c *St.25. Ed.5.*

The title and intereſt of an Executor is by the Teſtament, and not by the Probate, but without ſhewing it, they may releaſe the Probate.

The Juſtices will not allow them to ſue actions.

The Executor ſhall have the wardſhip of the Body and Lands of the ward in knights ſervice, but not in Soccage, & leaſes for years, and rent charges for yeers, Statutes, Recognizances Bonds, Lands in Executions; Corne upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattell and all other goods and Chattells of the Teſtator, if they be not deviſed, and may deviſe them; But if he doe will *Omnia bona & Cattalla ſua*, the goods of the Teſtator paſſe not, neither ſhall they be forfeited by the Executor.

An Executor is chargeable for all duties of the Teſtator that are certaine, but not for Treſpaſſe, nor for receipt of rents, nor for occupation of Lands, as Bayliffe or Guardian in Soccage, &c. For this is not any duty certaine ſo far as he ſhall have aſſets; If the Executor doe waſte the goods of the Teſtator, he ſhall pay them of his own.

An Executor ſhall not bee charged, but with

with ſuch goods as come to his hands, but if a ſtranger take them out of his poſſeſſion, they are aſſets in his hands.

If an Executor take goods of another mans amongſt the goods of the Teſtator, he ſhall be excuſed of the taking in Treſpaſſe.

Duties by matter of record ſhall be ſatisfied before duties by ſpecialty, and duties by ſpecialty before charges, and legacies before other duties.

An Executor may pay a debt or credit of ſome kinde, depending the writ, before notice of the action, but not after notice or iſſue joyned.

An Executor may pay debts with his own money, and retain ſo much of the Teſtators goods, but not Lands appointed to be ſold.

Any of theſe words, *debere*, *ſolvere*, *recipere*, Borrowed, or any word that will prove a man a debtor, or to have the money; If it be by Bill, will charge the Executor, or Adminiſtrator, but not the heire, if he be not named.

CHAP. XLVIII.

ADMINISTRATOR.

AN Adminiſtrator is he to whom the Ordinary of the Place where the inteſtate dwelt, committeth the Teſtators goods, Cattell, Credits, and rights.

For whereſoever a man dyeth inteſtate, either for that he was ſo negligent he made no Teſtament, or made ſuch an Executor as refuſed to prove it, or otherwiſe, is of no force; the Ordinary may commit the adminiſtration of his goods to the widdow or next of kin, or to both, which he pleaſeth, making requeſt; and revoke it againe at his pleaſure.

The Ordinary may aſſigne alſo a Tutor to the inteſtates children, to his ſonnes untill twelve yeare.

But ſo that it be not a prejudice to him that is the Guardian, and after thoſe yeares, he or ſhee may reſpectively chooſe their owne Curators, and the Guardian may confirme them, if there be not good order taken by their fathers Will.

As

As if such a Tutor die, the Infant cannot have an Action of account against his Executor.

The power and Charge of an Administrator is equall in every point to the power and charge of an Executor: A man may have an Action of the case against an Executor or Administrator upon the assumption of the Testator, upon good Consideration, or debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the Will to the Tutor of the Childe, to the Childs behoofe, untill he be of the age of 17. yeers, and if he be granted for longer time, it is voide.

An Administrator *durante minoritate*, may doe nothing to the prejudice of the Infant, he may not sell any of the goods of the deceased, unlesse it be upon necessitie, as for the payment of debts, or that they would perish; nor let a Lease for a longer time, then whilest he is Executor.

An Infant upon the true payment of a debt due to the Testator, may make an acquittance, and it shall be good.

For a Childe may better his estate, but not make it worse.

CHAP. XLIX.

HEIRE.

IF a man die ſeized of any Lands, and doe not diſpoſe of them by his Will, they doe diſcend to his heire as aforeſaid.

And he ſhall have not only the Glaſſe, and Wainſcot, but any other of ſuch like things affixed to the Free-hold, or ground; as Tables Dormant, Furnaces, Fatts in the Brew-houſe, or Dy-houſe; and the Box or Cheſt wherein the evidences are; the Hawks and the hounds, the Doves in the dove-houſe, the Fiſh in the Pond, and the Deare in the parke, and ſuch like.

He ſhall be charged by ſpecialty, for the debts of his Anceſtor, ſo long as he hath aſſets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the heire for the wrong, or treſpaſſe of his Father, but by expreſſe words.

Wid-

Widow.

THe Widow ſhall have all her apparrell, her bed, her copher, her chaines, borders, and Jewells, by the honorable Cuſtome of the Realme, except her husband unkindly give any of them away, or be in debt, that it cannot be paid without her bed, &c. yet ſhe ſhall have her neceſſary apparrell.

What things are Arbitrable, and what not.

THings, and Actions perſonall incertaine are Arbitrable, as Treſpaſſe, taking away of a Ward, &c.

But things certain are not arbitrable, but when the ſubmiſſion is by ſpecialty, if they be not joyned with others incertaine, as debt with treſpaſſe, &c.

Matters concerning the Common-Wealth, ſome are not arbitrable criminall offences, as fellonies and ſuch like, concerning the crime.

In the ſubmiſſion, three things are to be regarded.

Firſt, that it be made in writing with the parties Covenants, or bonds ſubſequent and ſufficient to binde them, their heires, Executors and aſſignes to performe the Award,

which shall be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power. For all is voide, that is not conteined in the Submission, or necessarily depending thereupon; And the Arbitrators labour lost, if they want means to compell the same to be executed.

Secondly that there be power given to them sufficient to doe all things necessary for the ordering of the controversies, as to appoint times and places for their meetings, to examine and decide the matters committed, and to bring the parties with their proofes, evidences, and witnesses thither together before them, and to punish the place defective, and to expound and correct such doubtfull sentences, and questions, as may arise upon their Award, afterwards inconvenient to either parties contrary to equity, and the Arbitrators good meaning; which inconveniencies were not before by them seene, at the making of the Award, *Temporis filia veritas*.

Thirdly, convenient time and place are to be limmitted for the yeelding up their Award to the parties, or to their assignes.

Six things to be regarded in an Arbitrament.

1 THat it be made according to the very ſubmiſſion, touching the things committed, and every other circumſtance.

2 That it be a finall end of all controverſies committed.

3 That it appoint either partie to give or doe unto the other ſomething beneficiall in appearance at leaſt.

4 That the performance be honeſt and poſſible.

5 That there be a meane how either part by the Law may attaine unto that which is thereby awarded unto him.

6 That every partie have a part of the Award delivered unto him.

For if it faile in any of theſe points, then is the whole Arbitrament voide, and of none effect.

Examples thereof.

1 AN Award that the parties ſhall obey the Arbitrament of *A.M.* is voide, for power may not be aſſigned.

2 An Award that any of the parties ſhall be

be bound, or do any other Act by the advice of the Arbitrator, is not good, except it be in the ſubmiſſion ſo, but that the parties ſhall be bound, or make aſſurance by the advice of Counſell, is good.

2 An Award, that the parties ſhall be non-ſuited, is not good, becauſe it is no finall end, for the partie may begin againe: that the partie doe withdraw his ſuite, is good.

If the Submiſſion be of divers things, and the Award only of ſome of them, yet is the Award good for that part, as if the Submiſſion be of all Actions reall and perſonall onely, or if it be only, *de poſſeſſione*.

3 If two ſubmit themſelves to the Arbitrament of all treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit, this Award is voide.

So it were if one of them ſhould goe quite againſt the other, if the Submiſſion were not by bond, for an Award muſt be finall, obligatorie, and ſatisfactorie to both parties.

An Award, that either partie ſhall releaſe to the other all actions, and that becauſe the one hath treſpaſſed more than the other, hee ſhall pay to the other 1d. is good.

In debt or treſpaſſe of goods taken, that the Defendant ſhall retaine part, and the Plain-

Plaintiffe to have the reſt, is not good.

4 An Award, that one of the parties ſhall doe an act to any ſtranger; the Act is voide, if the parties be not bound.

Or if it be that he ſhall cauſe a Stranger to enfeoffe, or be bound to the other partie, becauſe he hath no meanes to compell the ſtranger.

5 An Award is voide, if it be neither executed, nor any meanes by Law for the execution thereof, as if it ſhould be awarded that one ſhould pay the other 10. pounds, this is good, for he may recover the ſame by an action of debt. But if it were awarded, the one ſhould deliver to the other an acre of Land, or doe ſuch like Act Executory, it were voide, if it be not delivered ſtraight-way, or proviſion made by bond, or otherwiſe to compell the payment thereof, according to the Award, if the ſubmiſſion be not by ſpecialty.

6 Indenters of Arbitrament muſt be made of ſo many parts, that every perſon muſt have a part.

Arbitramentum æquum tribuit cuiq; ſuum.

AN Award is commonly made by Laymen, and ſhall be taken according to their intent, and not in ſo preciſe a forme as

Grants, or pleadings, but as verdicts, yet the ſubſtance of the matter ought to appeare either by expreſſe words, or by words equivalent, or by thoſe that doe amount thereunto.

But it were good that Awards were drawn up by ſome that is skillful, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

Agreement.

AN agreement is made betweene the parties themſelves; there muſt be a ſatisfaction made to either partie preſently, or remedie for the recompence, or elſe it is but an endeavour to agree.

Tender of money without payment, or agreement to pay money at a day to come, is not any ſatisfaction before the day be come, and the money be paid; it cannot be pleaded in Barre, in an Action of Treſpaſſe. For that as the other partie hath no meanes to compell the other to pay the money: So hee may refuſe it at the day, if he will, otherwiſe in an Arbitrament; but money paid at a day, before the Action brought, is a good plea.

FINIS.